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Report from The Democratic Audit of Sweden

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SNS FÖRLAG

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Contents

Publisher's Foreword

In this volume the SNS Democratic Audit presents a new report on the state of democracy in Sweden. In presenting these annual reports it is the aim of SNS—the Swedish Center for Business and Policy Studies—to contribute facts and analyses by social scientists to a constructive public debate concerning the renewal of the political system in Sweden.

This year, Swedish democracy is scrutinised from a European perspective. Does Sweden's political system differ from the rest of Europe? If so: is that a good or bad thing? Are there distinguishing characteristics that are worth keeping or would Swedish democracy profit from an adjustment to conditions in other European countries? These key issues form the subject of this year's Democratic Audit.

The Democratic Audit this year includes four leading social scientists of international standing, all of whom are familiar with the Swedish political system. The report is the product of team work in which all the members of the Audit contribute to each chapter. The chief contributors to each chapter are as follows: chapter 2, Professor *Klaus von Beyme*, chapter 3, Professor *Eivind Smith*, chapter 4, Professor *Birgitta Nedelmann*, and chapter 5, Professor *Lauri Karvonen*. Professor *Olof Petersson* has been the coordinator of the work of the group and the editor of the report. The research group is collectively responsible for the conclusions and proposals of the report. *Anna Wahlgren*, Research Assistant at SNS, participated in the discussions of the group and her contributions to the report include the collation of data, interviews, documentation, linguistic supervision and text editing.

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The work of the SNS Democratic Audit of Sweden is carried out under conditions of complete academic freedom and, as is the case for all SNS publications, the authors are solely responsible for the contents of the report. The reference group has presented its opinion on the report in a separate document. SNS as an organisation does not take a stand on policy issues.

Stockholm, March 1999

Hans Tson Söderström
President of SNS

1 Swedish Democracy from a European Perspective

This report examines Swedish democracy from a European perspective. The Swedish debate on democracy is currently being shaped by the country's membership of the European Union. Sweden is faced with solving the problems associated with a democratic form of government organised over several different levels. The need to adapt to European circumstances has forced Swedes to take a new look at their own political system.

Is Sweden different from the rest of Europe? Many of the distinguishing characteristics of the Swedish political system can be traced relatively far back in the country's history. The Swedish democratic tradition sets great store by popular support at the local level, the principle of public access and equality. The state tradition in Sweden is also powerful and the model of autonomous administrative agencies has endowed the public administration with a unique structure.

Comparisons with Europe have given Swedes pause for thought. Will Sweden continue to want a political system which differs on certain points from the European median? Could Sweden, in fact, serve as a model of democracy for the rest of Europe? Or are there grounds for reevaluating historically determined traditions? Would Swedish democracy gain by its political system becoming more like its European neighbours?

It is here that the democracy debate enters into some of the key problems of constitutional policy. What are the alternative courses of action in constitutional terms? What lessons can a country learn from the constitutional experience of other countries and from the main currents in the constitutional debate? How extensive are the possibilities for improving conditions for

welfare, growth, justice and other desirable social circumstances by making changes to the political institutions?

The Mirror of Comparison

The first impression a stranger gets of a society is often gained from words and pictures. Anyone not knowing a society at first hand has to try to avoid the many misconceptions a first impression may involve. The symbols of words and images often lead astray. The more frequent, long-lasting and multi-faceted the contact between the observer and the members of the community, the easier it becomes to interpret it.

Such contacts can, however, be too frequent. As a rule, the person who lives his or her life actively involved in a society will come to feel like part of that society. We can easily become blind to the distinguishing features of our particular community. It is human nature to consider what one has become accustomed to as what is normal, even perhaps as what is desirable, or indeed, inevitable. Presumably, the probability of developing a symbiotic relationship of this kind increases the closer one is to the core social institutions.

In order to break out of this mental prison, one needs to be aware that social institutions in different countries are often very different and that ties to one's own society can create a distorted image. Comparative studies can provide a useful contribution to awareness of this kind. This is particularly true where the aim is to set up a mirror to reflect one's own society and one's own way of thinking. By this means, a foundation may be laid for a debate into what improvements are possible.

The debate will be at its best if the participants accept that the central institutions in their own society may be discussed without considerations of national prestige. The aim of considering other solutions and responses is not to copy them but to become aware of the national conditions obtaining in each country. It is important to remember that national peculiarities need not be shortcomings in and of themselves; the many or the powerful are never right simply by virtue of their number or their power. But it is also

appropriate to point out that national institutions develop slowly and many of the steps that have been taken along the way might have been different. This means that there is no reason to exclude the possibility that things can be improved, or made even better. As it proceeds, the debate may make clear whether the need exists to make changes to the Swedish system.

Powerlessness

A good many of the social problems that currently lie at the heart of public debate concern the workings of democracy.

The attitude of the general public to the political system is marked by scepticism and alienation. At the parliamentary elections of 1998, 81 per cent of those entitled to vote cast their ballots; turnout was 78 per cent in the elections for municipal and county councils. In international terms these figures are not alarmingly low, but the trend is negative: electoral turnout is falling. Particularly low turnout was registered in immigrant areas where unemployment is high and many people receive social support; in one constituency in the Gothenburg suburb of Bergsjön only 36 per cent made use of their right to vote. Interview surveys indicate a further erosion in trust in politicians. There is also some anxiety that young people are abandoning politics and over time other forms of social involvement as well. In the long-term perspective, a system can be discerned which would appear to be a logical impossibility: a democracy without citizens.

It is not only representative democracy that is displaying the symptoms of crisis. There is also cause for concern in relation to the organisation and ways of working of public power. A large and complex public sector makes great demands in terms of the allocation of responsibility, scrutiny, investigation and the capacity to intervene swiftly to correct errors. The problems being encountered in the debate on constitutional policy are difficult and remain as yet unsolved. What significance do the Swedish courts have and what role ought they to play in the future? Should the state be free to intervene in any way it chooses in local self-government? Is the sequence of affairs and scandals a sign of short-

comings in areas concerning the separation of powers, the power of scrutiny and accountability?

Social change during the last ten years has also highlighted the close connection between economics and politics. The workings of the political system are of major importance for investment, production, consumption, growth and social welfare. High unemployment is a failure of the political system. Despite institutional reforms such as a new budgetary procedure, there is concern that the political system will not be able to cope with a new recession. Sweden still has a huge national debt. The economic condition of the public sector is very sensitive to the state of the economy as a whole. According to the Swedish Instrument of Government, it is the Cabinet which rules the country, but is a minority government in a position to take the necessary decisions? Even though Sweden, for the moment at least, is not a member of the Economic and Monetary Union, EMU is already a fact of life and economic trends in several of our neighbouring countries are no longer decided at the national but at the European level. The question is how free are Swedish decision-makers to influence economic policy. Democracy is based on the premise that the people are able to call their representatives to account at regular intervals. Powerless politicians create powerless voters.

The Ideal of Democracy

Both these recent developments and political theory attest to the fact that the concept of democracy comprises several different elements. As an ideal, a democratic society should be based on popular, constitutional and effective government. This report is thus in agreement with the general definition of democracy which has served as the benchmark of previous reports from the SNS Democratic Audit (e.g. Petersson et al. 1998).

The need for popular government follows from the principle of the sovereignty of the people. In a democracy, political decisions must embody the wishes of the citizens. Although individuals may have different interests, tastes, talents and incomes, democracy means that everyone enjoys the same right to participate in mak-

ing decisions about the common affairs of a society. Government by the people is based on the free formation of opinion. This means that a public sphere must exist for the exchange of information and for debate and criticism to take place. The citizens must also have the opportunity to participate actively in the shaping of their own future and that of society. Citizenship is based on a combination of rights and obligations; as a result, democracy imposes requirements of tolerance and respect for differences of opinion.

Constitutional government embodies the notion that power is bound by law and clearly defined. The citizen is guaranteed a number of fundamental rights and freedoms in relation to the state. An individual who considers that a right has been infringed is entitled to have the matter heard in an independent court of law. Constitutional government also imposes requirements in terms of due process. Public power is exercised under the law. The principle of the separation of powers is also an integral part of the rule of law. It follows from this principle that the public sector should be divided into various bodies with clearly defined mandates. A number of public authorities are charged with supervising and investigating other public bodies.

A working democracy also needs effective government. The aspirations of the citizens are turned into practical reality by formal decisions implemented by means of various forms of public administration and the exercise of public authority. The political system must have economic and other kinds of resources at its disposal. Democracy also requires decision-making capability, including procedures and institutions which can mutually adjust various interests and requirements so as to arrive at clear decisions. Popularly elected politicians also need the support of an effective and professional organisation which can produce a sustainable basis for decision-making and which can implement the decisions that have been reached democratically.

According to the terminology selected by the SNS Democratic Audit, the ideal of democracy is made up of three parts: popular, constitutional and effective government. Since the word democracy is so positively charged in value terms, it is not surprising that it has come to be used with somewhat divergent meanings.

On occasion, the concept of democracy is defined more narrowly. Such as when democracy is identified with popular government, or when democracy is equated with the rule of the majority. Constitutional and effective government are then excluded from the definition. In which case a different term is required to describe the concept as a whole: "an effective and constitutional democracy" might be one suggestion. However, the terminological issue is of minor importance. The main argument is that any study proceeds on the basis of clear criteria. The starting-point for this report is that popular government is an essential but not sufficient requirement for a democratic polity. The debate on democracy would be incomplete were it to neglect the requirements of constitutional and effective government.

In practice, it is far from easy to unite these three parts of the democratic ideal. Tensions and dilemmas exist, to which every society has to find practical solutions. Various countries have at different times emphasised slightly differing values. The main focus of the democracy debate may shift as a result. Occasionally, it may be popular participation that is in the spotlight, at other times the opportunities that exist for scrutinising and investigating the power of the state.

Constitutional Policy

International comparisons make clear the wide degree of variation within the family of democratic states. The journey towards realising the ideal of democracy takes many different routes. In consequence, systematic comparative surveys give rise to critical questions. Insights into constitutional thinking increase awareness about the ideals and norms which form the basis of the democratic society. The political institutions of a country may seem self-evident to its inhabitants, while seen from an international perspective they might well have developed differently.

Knowledge about how other countries have set up their constitutions frequently provides a stimulus to new ideas. It is possible to improve political institutions. The aim of constitutional policy is to create a constitution that works properly. Successful institu-

tions not only promote the political process, they may even help to move social change in a positive direction.

This year's report from the Democratic Audit provides a contribution to the debate on the constitution in Sweden. The work entailed is linked to a current research project into constitutional issues. The SNS Constitutional Project is studying the consequences of constitutional choices (Petersson 1999). The question is what would happen if Sweden were to change its political institutions. The first step required to tackle this research problem on a systematic basis is to chart the alternative courses of action in relation to the constitution. The task subsequently is to analyse the probable effects of constitutional choices. The aim is to study these consequences in relation both to different aspects of the political system and other parts of society.

Currently, discussion of the constitution of the future needs to take account of the fact that national forms of decision-making are becoming increasingly intertwined with power processes at the international and, above all, the European levels. Membership of the European Union has already entailed significant consequences for Swedish politics and public administration and this process of adaptation is by no means finished. In addition, Sweden as a member state has a responsibility to participate in the development of the EU's future constitution. The problem of constitutional policy has thus become a pressing reality at the European level as well.

The Structure of the Report

The following chapters examine Swedish democracy from the perspective of the democratic ideal of popular, constitutional and effective government. The aim is not, however, to chart exhaustively the entire political landscape. Instead of compiling a general survey of the political system, we have focused on a few areas which are examined in greater detail. However, choosing to exclude certain areas should not be taken to mean that these are any less important. The fact that we have identified a number of problems in Swedish democracy does not mean that the subject has been exhausted as a result.

Chapter 2 provides a broad survey over the current constitutional debate in Europe. Several countries are trying to improve the design of the political decision-making process. Some countries are discussing a total revision of their constitutions. Others are focusing on reforming their electoral systems, changing the territorial organisation of their country or on finding complementary decision-making methods of a direct democratic nature. The question is whether these ideas should be implemented in Sweden.

Chapter 3 focuses on the major issue of the relationship between constitutional government and democracy. What the concept of constitutional democracy entails is that the organisation and working practices of public power must satisfy certain specific requirements. Sweden has a number of historically determined defining characteristics. The question is whether these favour or obstruct development towards a functioning democracy which encompasses both popular and constitutional government.

Chapter 4 highlights a key component in a living democracy, the need for a forum for conversation, debate and criticism. As a result of the Europeanisation of political life, getting a public sphere operating in Sweden in which to discuss European issues has become an ever more urgent matter. The European elections involve Swedish voters appointing their representatives to a European decision-making body by direct elections. This chapter examines how MEPs can contribute to the public forum for the discussion of European issues in Sweden.

Chapter 5 investigates one of the democratic reforms of recent years, the introduction of an increased measure of voting for individual candidates. The protracted debate on voting for individuals has shed new light on how Swedish politicians regard the representative process. Now that the new system is being tested in practice, the time has come to assess what has happened in relation to all the hopes and concerns expressed. The question is whether Sweden has cause to be satisfied with its system for electing individual candidates.

The concluding chapter summarises the conclusions and proposes several ways of taking Swedish democracy forward.

2 Does the Constitution Need Reforming?

Not so very long ago the rules enshrined in constitutions were seen as lacking any independent significance. The idea that prevailed among political scientists as late as the 1980s was that a constitution only provided a framework of roles and power relations.

Democracy was shaped primarily by the struggle between various social forces.

It is only in recent years that political scientists have rediscovered the importance of institutions and constitutions. At the core of the neo-institutionalist school lies a presumption concerning the choices made by rational actors. Research has come to focus on the way in which various institutions can be deliberately combined. The renewed interest in the significance of institutions has brought about a renaissance in the work of traditional scholars, such as Giovanni Sartori, the Italian-American political scientist.

The neo-institutionalists were considered to view institutions from an instrumental perspective. Institutions were thus seen as channels for politicians, acting relatively independently of constitutional rules. Using an analogy drawn from the history of art, the neo-institutionalists recommended that research should abandon a "centralising perspective", i.e. that of the national legislator (Mayntz & Scharpf 1995, p. 44). New forms were discovered instead of decentralised political control. The role of the state was reduced to a supervisory one.

The response of more traditionally minded researchers into institutions was to reintroduce a holistic constitutional perspective. The political science of our forefathers with its protracted debates about the pros and cons of parliamentary and presidential

forms of government enjoyed a renaissance. In the case of a political scientist such as Sartori, the reawakening of interest in political institutions brought with it an opportunity to roll back the dominance of sociology; political scientists would be able to subscribe to a manifesto in defence of politics (e.g. Crick 1962). Only in France would a conflict of this kind prove unnecessary, as French political science has powerful institutionalist foundations which have never been abandoned.

The art of constitutional engineering is founded on a presumption concerning rationality. Human reason is capable of creating positive institutions. This is not to say that everyone considers the constitution to be a machine, as was the case among the thinkers of the Enlightenment. In the view of researchers such as Jon Elster (1988, p. 319 ff.), it is scarcely possible to predict the consequences of constitutional change. His conclusion is that the starting-point for the design of institutions should be the need for ensuring justice rather than speculation about effective methods for problem-solving. Other, less normatively inclined, researchers, however, evince profound suspicion of justice as a goal. What is required are good institutions, not good citizens who happen to agree on the nature of justice. The opposite view has been asserted by radical participatory democrats ever since Rousseau. They dispute the possibility of "good institutions" and rely instead on human individuals who have been brought up with the ideal of "the good citizen", who is motivated by a civil religion in a civil society. The theorists of participatory democracy have, however, been criticised for neglecting the fact that such a society also requires certain institutions, not least because of the risk of the abuse of power posed by state-controlled education.

Swedish constitutional history has been characterised by the tension between the proponents of justice and equality, on the one hand, and the institutionalists, on the other, who have sought to uphold a constitution free from ideological proclamations. The findings of the Commission of Inquiry into Human Rights and Freedoms represent a compromise (SOU 1975:75). An exhaustive catalogue of civic rights and freedoms was added to the Instrument of Government and an additional paragraph was inserted into the constitution laying down a number of social rights.

The final wording of this paragraph was not particularly remarkable; the list of social rights in Sweden is far less extensive than in Italy though longer than in the German constitution. It is worth noting that the Swedish Instrument of Government stipulates that no citizen may be deported or refused entry to Sweden (IG 2:7). The absolute prohibition of capital punishment (IG 2:4) is unusual in states which lack any historical experience of dictatorship. Such rules are otherwise to be found mainly in post-Communist states (von Beyme 196, p. 116). The Swedish constitutional provision that foreigners are to be equated with Swedish citizens in terms of the protection of their rights (IG 2:22) constitutes a milestone in the history of human rights. In this respect other countries have lessons to learn from Sweden.

The State of Opinion

Sociologically oriented surveys of the attitudes of the general public towards the political system do not suggest that there is any pressing need for constitutional reforms. A major European research project found that the Swedes, like their Scandinavian neighbours, were relatively satisfied with their social institutions (table 2.1).

Table 2.1. Confidence in Swedish Institutions (in percent)

	1981	1990
Church	39	38
Armed forces	61	49
Education system	62	70
Legal system	73	56
Press	27	33
Trade unions	49	40
Police	80	74
Parliament	47	47
Civil service	46	44
Major companies	42	53

Source: Listhaug och Wiberg 1995.

Confidence in parliament remained constant during the 1980s while confidence in the civil service and the legal system declined.

The overall trends in Europe are very closely reflected in the case of Sweden. Confidence in the institutions of the public sector showed a slight decline while there was a moderate rise in confidence in private sector institutions; the exceptions being, in most countries, the church and the trade unions.

More current data from Sweden indicate declining confidence in political institutions such as parliament and the government.[1] These trends, too, are in line with the pattern in other countries. The results of more extensive surveys over time are difficult to analyse as comparable data are not provided by the various surveys. Surveys of this kind are, in any case, ill-suited to form the basis for conclusions about the need for reforms, since there is no defined threshold to indicate when it is necessary to change the constitution. Although very low figures for confidence have been registered in Italy, the country has survived.

Italy provides an example of a situation in which the need for institutional reforms cannot always be directly linked to the state of current opinion. In Germany, 6 per cent of members of parliament and about 30 per cent of the population believe they are living under a presidential system—the system goes on working all the same. The level of demand for constitutional reform in Sweden has rarely been investigated. However, asking the people whether Sweden needs federalism or a constitutional court is unlikely to uncover any particularly well-informed body of opinion.

Another form of opinion survey is based on the responses made by decision-makers, although such elite surveys rarely pose questions about confidence but rather about power and influence. Under the terms of the Swedish Instrument of Government, parliament is the foremost representative of the people, even though its influence in real terms is deemed to be much weaker than that of the government (Anton 1980, p. 108; Fenner 1998, p. 282 f.).

A study carried out in the mid-1980s showed that parliamentarians themselves consider parliament to have less power than the mass media and the trade unions and to be of only slightly

[1] Between 1986 and 1997 the level of confidence in parliament fell from +36 to –16 and in the government from +32 to –25. The surveys are based on nationally representative interviews (Holmberg and Weibull 1997, p. 39).

greater importance than public administration (Esaiasson & Holmberg 1996, p. 198). The difference between the parties was marked. Possibly somewhat naively, the Social Democrats felt that the system worked as intended: the government, followed closely by parliament, was placed at the apex of the power hierarchy. Among the other parties, parliament placed only fifth or sixth in the power rankings. Pressure groups usually have the most realistic assessment of the power structure and, rather tellingly, the interest groups are more interested in meeting the directors of the administrative authorities than members of parliament (Esaiasson & Holmberg 1996, p. 263).

Democratising the Democracies

The end of Communism posed a new challenge to the established democracies. No longer was democracy faced by the ultimate adversary or by any external models for comparison. Hitherto, democracy had always been able to defend itself with reference to declarations such as Churchill's celebrated phrase that democracy is the worst system—with the exception of all the others. Once people were in a position to make comparisons with the alternative models of dictatorship, democratic government, with all its failings, stood out as the most desirable.

Now that comparative assessments are no longer possible, a more rigorous yardstick is being applied to democracy. Democratic government is no longer assessed from a *comparative* perspective but from a *normative* viewpoint. It is scarcely surprising that disenchantment is growing now that the established democracies are no longer being compared with the drab Communism of the Eastern European states but with democracy's own ideals.

Under the pressure of the rising expectations of the general public, a good many democracies started experimenting with constitutional reforms during the 1990s. Some, such as New Zealand, have sought to improve the representation of ethnic minorities. Others have set their sights on stabilising the executive during an era of parliamentary crisis; Israel introduced direct elections for the office of prime minister, Italy altered its electoral system in

favour of a stronger element of election by majority vote and debated a semi-presidential system along the lines of the French model.

Neither the Nordic countries nor Germany have recently witnessed any constitutional reforms of a more comprehensive nature. Reunification, in the case of Germany, and the concomitant extensive revisions to the constitution might well have motivated changes to the democratic playing-rules, as had already been proposed by a series of commissions of inquiry as far back as 1976. The fact that the Nordic countries failed to prioritise constitutional problems may be readily understood. During the 1990s their political agenda has been dominated by economic problems, partly as a result of globalisation and Europeanisation. The consequences of the Maastricht treaty and Economic and Monetary Union involve so many unknowns that the direction of possible democratic reform is far from clear.

The concept of constitutional engineering did not come into existence in tandem with the transition from dictatorship to democracy. The challenge to find new constitutional solutions applies first and foremost to the transition *from democracy to democracy* as the established democracies entered a period of crisis. Italy serves as the prime example. The old corrupt political system had never really been consolidated and was abandoned without any significant opposition from the political establishment. One constitution had simply succeeded the other, every now and then. At some point in the nineteenth century, a British visitor entering a French bookshop to purchase a printed version of the French constitution was told: "Sorry, we don't deal in periodic literature." During the post-war era, in contrast, the established democracies have proved relatively stable. Constitutional history makes clear that such periods of stability have been the exception rather than the rule.

Institutional changes have become a permanent element of Western European politics as a consequence of the European Union. In Germany, one fifth of all legislation has its origins in Brussels. These frequently involve constitutional amendments. In the absence of a European constitution (which would have the authority to allocate powers and responsibilities) it is the Euro-

pean Court of Justice in Luxembourg through the process of judicial review which interprets the competence of EU-institutions and the compatibility of community law with national legislation. A good many experts (e.g. Grimm 1994, p. 50 f.) have sounded a note of caution about introducing a European constitution without first having in place a democratic infrastructure. The longer the introduction of an EU-constitution is postponed, the more difficult it will be to reach agreement about the design of such a system.

After the Second World War, the European democracies represented fairly similar variations on the parliamentary system, and this includes France prior to 1957. France introduced a semi-presidential system in 1958 and the same model has been debated ever since by several countries during times of crisis; Italy being one example. This system is also to be found in Poland and other candidate countries preparing themselves for membership of the EU. Austria is discussing increasing the powers of the president and Finland has introduced direct popular election of the president along the lines of the French prototype; the new Finnish constitution will, however, reduce the powers of the president.

In the majority of European countries, the notion that democracy is in crisis is widely-held. Common symptoms are diminished party identification, falling turnout in elections, increased fragmentation of the party system and a decline in confidence in "the political class". Constitutional reform appears to offer a remedy. In the current constitutional debate in Western Europe, the focus is on five key areas: changing *the entire constitution*, changes to the system of *parliamentary government*, the introduction of *federalism*, changes to the *electoral system* with the aim of ensuring more stable majorities and the incorporation of elements of *direct democracy* so as to compensate for the shortcomings in the system of representation. The question now is whether changes of these kinds are needed in Sweden.

An Entirely New Constitution?

Until 1974 Sweden possessed the oldest constitution still in force. Total reform of the constitution had been under consideration

since the Second World War, but there were many who found it difficult to abandon the venerable Instrument of Government. Like a good many constitutions which date from the era of the separation of powers, it had successfully provided a framework flexible enough for a society which no longer has anything in common with the one in existence in 1809.

The Commission of Inquiry into the Constitution, appointed in 1954 under the chairmanship of Rickard Sandler, proposed an entirely new Instrument of Government. In 1966, politicians agreed a compromise involving a total revision of the constitution, the codification of popular sovereignty and parliamentarianism, the abolition of the Upper House and a proportional electoral system designed to avoid party-splits in the Riksdag.

A first step was made in the form of a partial constitutional reform involving the abolition of the Upper House and a new electoral system (SOU 1967:26). Once these changes had come into force, proposals were made for a new Instrument of Government and a new Riksdag Act (SOU 1972:15). The rules governing the rights and freedoms of citizens were made the subject of new commissions of inquiry (Algotsson 1987). The Commission of Inquiry into the Protection of Human Rights under Gunnar Heckscher proposed creating special constitutional provisions to cover legislation aimed at curbing such rights (SOU 1978:34). In recent years membership of the EU has brought about changes to the constitution. Other constitutional reforms introduced during the 1990s have dealt with the introduction of preferential voting at elections, quadrennial parliamentary terms and increased constitutional protection for certain rights and freedoms.

Answers to the question whether it is easy or difficult to change the Swedish constitution will vary depending whether consideration is taken of the formal, or the real, decision-making process. To amend the constitution, parliament has to pass two identically worded resolutions in separate sessions, with a general election held in between; the option of holding a decisive, as opposed to a consultative, referendum has not yet been implemented. Unlike in many other countries, it is relatively easy to gather sufficient support for an amendment since only a simple majority is required. However, a very different conclusion has to be

drawn when the real decision-making process is taken into account. The Swedish model of commission of inquiry, report, remittal, legislative proposal and passage through parliament has certain advantages from the perspectives of oversight and participation, but runs the risk of becoming drawn out and overly complicated. Sweden would seem to be fairly unique in international terms given the emphasis placed on popular support and consensus (von Beyme 1968, p. 64).

Total revisions of the constitution frequently occur when dictatorships are transformed into democracies. The incidence of established democracies deciding to change their entire constitution is less frequent, although there have been a number of such cases. A state which introduces a federal polity may find it most expedient to rewrite the entire constitution; Canada and Belgium may be mentioned here as examples. Countries such as Sweden, the Netherlands and Finland have ultimately decided to modernise their constitutions instead of patching up the existing regulatory apparatuses. France found itself in an acute state of crisis in 1958 and made the transition from a parliamentary to a semi-presidential polity by means of a new constitution.

It is otherwise most usually the case that constitutional reform takes place by a process of gradual revision of the existing constitution. Although Sweden's current Instrument of Government, now twenty five years old, might well have been designed differently on a number of points, it can hardly be said to suffer from such serious shortcomings as to confront Sweden with a pressing need for an entirely new constitution.

Changes to the Parliamentary System?

Democratic monarchies are always parliamentary polities. Since the head of state is not considered to play a significant political role, the country is ruled by the government which is answerable to parliament. Democratic republics, in contrast, are faced with a choice between several different systems of government. The president may play a more or less key role in political life.

During the 1990s, several republics have been actively consider-

ing a semi-presidential system instead of a purely parliamentary form of government. The phrase "purely parliamentary" is used here to remind the reader that even semi-presidential variants belong to the family of parliamentary systems; the government may still be dismissed by parliament which is not the case under the presidential system. Constitutional reforms in Italy have meant that Sartori's dictum that mixed systems are better than pure types (1994, p. 136 f.) has gained widespread acceptance in that country.

Italy's example serves as a deterrent in a number of other respects. Certain leaders, such as Berlusconi, changed their minds on several occasions and then defended themselves by reference to experts. Israel experimented with a model all its own by allowing the people to appoint the prime minister in direct elections, the experience has not, however, been particularly positive. Nevertheless, opinion surveys show that there is support for the idea of directly elected presidents, even in Germany where the president only enjoys minimal powers. The general public, perhaps unwittingly, would appear in this instance to be championing the semi-presidential model.

In hearings held by an Italian commission of inquiry into the constitution in 1997, Sartori advocated that Italy change to the French semi-presidential model with elections held in two rounds of voting; the idea being that this would lead to the creation of a party system of two blocs, which would facilitate the creation of majority governments (Commissione 1997, p. 335, col. 1). What he overlooked, however, was that the semi-presidential system makes the evolution of a system of two blocs more difficult in that the president is not obliged to win the same measure of support for his or her party as is the prime minister in a purely parliamentary system.

During the 1960s, Sweden was the parliamentary monarchy in which the issue of introducing a republic was most hotly debated. In the end the parties reached a political agreement on a constitutional settlement. The so-called Torekov-compromise led to the decision to retain the monarchy while depriving the monarch of all powers apart from purely representative duties (Birgersson & Westerståhl 1986, p. 164). Whereas other parliamentary mon-

archies still allow the monarch to participate in the formation of governments, in Sweden it would now be all but inconceivable to allow the head of state to return to a more active role in political life. This means that experimentation with any form that might correspond to the semi-presidential system is effectively excluded.

In Sweden responsibility for the formation of the government has been vested instead in the office of the parliamentary Speaker. While the occupants of the Speaker's chair have hitherto taken great pains to appear to act impartially, there is always the risk of suspicion arising that their actions have been influenced by party political considerations. In consequence, the Swedish Instrument of government sets out very detailed procedural rules for the formation of governments. Only a few countries, such as Greece and Bulgaria, are even more prescriptive; there, provisions are also in force as to the particular order in which various alternative majorities are to be tried out.

Like Germany, constitutional provisions in Sweden on the formation of governments involve a degree of over-regulation. The procedure risks becoming clumsy as a result. As a constitutional problem, however, this is a fairly marginal matter. A political culture focused on consensus can also cope with impractical rules. In contrast with other parliamentary democracies, it is the prime minister and not the monarch who proclaims the government's legislative programme (Schück et al. 1992, p. 286). The advantage from the rhetorical standpoint should not be overlooked; it is always troublesome when monarchs are required to declaim texts of which they actually disapprove.

The Swedish monarchy gives rise to comparatively few problems. In other monarchies, in contrast, the ruling house has been the focus of extensive debate. Compared with the ancient traditions of the British monarchy, for example, Scandinavia's bicycling rulers appear to be considerably more contemporary figures. And yet proposals to modernise the British royal family have served to sound a warning note about pushing reforms too far. Norway and Sweden appear to be rather boring countries, suffering from a lack of glamour and pomp (Bogdanor 1997, p. 194 f.). The absence in post-modern society of venerable institu-

tions may possibly have been neglected in the debate about "the Swedish republic" (Back & Fredriksson 1966).

The balance of power in the Swedish parliamentary system was made subject to constitutional regulation in the partial reform of the fundamental laws which entered into force in 1971. The institution of parliament's freedom to call a vote of no confidence and the government's counter-offensive entailed in its right to dissolve parliament and call new elections brought Sweden fully into line with international norms as they relate to the design of parliamentary government. Hitherto, a no confidence vote had been a hypothetical matter and this aspect of the Continental polities had no counterpart in Sweden.

However, votes of no confidence have proved to be of ever diminishing importance in parliamentary systems of government. Most governments leave office either because they have lost an election or because coalitions fall apart, not because a formal vote by parliament has brought the government down. Opposition parties in Sweden have moved motions of no confidence on several occasions; in every case, when the vote has been called it has been without issue.

The option of dissolving parliament has been implemented only once in the modern era. This occurred during the remarkable conflict between government and parliament which resulted in the pensions election of 1958. The experiment has not been repeated since. The fact that any subsequent election must take place as scheduled means that it has rarely been a meaningful option for governments to use a snap general election to allow an extra opportunity for the popular will to be expressed. Although a constitutional amendment on this point might increase the probability of calling new elections, antipathy towards extra general elections is very widely entrenched in Swedish political culture.

Sweden has a long tradition of negative parliamentarianism, the prime minister remains in office as long as the opposition cannot form a majority of its own. This makes for a high degree of tolerance for minority governments. A study of parliamentary systems during the period 1945–1987 shows that 57 per cent of Swedish governments were in the minority. During these years,

governments were supported on average by 47 per cent of parliament (Strom 1990, p. 58). Only Denmark among the Nordic countries had a greater number of minority governments (88 per cent). Nordic politics is based on the principle of gravitation, i.e. the formation of governments is led by a core group which holds a strategic position between the party blocs; this helps to make minority government a normal component of the process. Formal rules play a subordinate role.

Constitutional reforms are hardly likely to change a deeply entrenched parliamentary culture. Continued erosion of the established Nordic model with its Social Democratic hegemony is making the formation of majority governments less and less probable. The Swedish tradition encompasses elements both of majoritarian rule and consensus democracy (Lewin 1996, 1998). No one can predict to what extent both these elements will continue to coexist in harmony if one of them is strengthened at the cost of the other through reforms in constitutional policy. Finland serves to underline such doubts. That country has altered a number of constitutional rules while governing coalitions have remained largely of the same type.

It is the view of certain contributors to this debate that constitutional engineering may only be justified by general arguments on grounds of justice and that it is impossible to predict their consequences (Elster 1988, p. 303 ff.). Such a conclusion would be equivalent in practice to making any constitutional reform impossible (Sartori 1994, p. 200). However, consequential predictions should also take into account factors that relate to the political culture and the long-term behaviour of political leaders. Accepting the idea that institutions have a role to play and that institutional change may alter political life does not mean that the traditions of the political culture are without importance.

When a system finds itself in a deep crisis, as France did in 1958, a charismatic leader such as de Gaulle may be able to change institutions and, in the longer term, alter the way in which the French people understood the role of parliament as well. Sartori may well have felt that after 1994 and the failure of the Second Republic, Italy was approaching a crisis similar to that in France in 1958. The dead heat in the Israeli system in 1996 may

also have brought about a fundamental constitutional reform. This is, however, not the case where Sweden is concerned.

One possibility might be for Sweden to normalise its parliamentary system by impelling it towards a more majoritarian democratic set-up. Such a reform would involve introducing a less proportional electoral system and might also call for the raising of the threshold against the representation of minor parties in parliament.

A further extension of the duration of the legislative term might also be entertained. Many countries are considering the British five-year term, although rarely are governments that long-lived in practice. However, the process of change from a three to a four-year term became so cumbersome that Sweden is unlikely to stumble any further along this road.

Even if it proved possible to strengthen the majoritarian elements in the Swedish system along these lines, such a reform would only be purchased at great expense. Minorities and various other groups would be less well represented. Given the Swedish traditions of representational pluralism, alterations of this kind are hardly likely to result in the creation of any logically coherent system. Sartori complains that the older legalism of the jurists considered constitutions as though they were logical systems unaffected by friction and from which contradictions were absent. Constitutional politics, however, commonly involves the politics of power; as a result, constitutional systems are normally full of contradictions. The result in Germany was a system that was almost entirely deadlocked, "the semi-sovereign state". The more radical the interventions constitutional engineers succeed in implementing, the greater the risk that countervailing forces will water down the reforms and thus create an even more irrational system than existed before. The inference would thus be that Sweden would be best advised to leave its parliamentary system alone despite all its imperfections.

On the other hand, there is scope for improvements at the level below the constitutional. Seen from the international perspective, the organisation of Swedish government seems somewhat peculiar. Despite being such a small country, Sweden has had a relatively large number of smaller government departments and

administrative agencies which makes the task of control more difficult. One consequence of the Swedish model of autonomous administrative agencies is that it is relatively easy to reshuffle the responsibilities of the government ministries. This evolution in Sweden is unique since even before the introduction of parliamentary government, the system was subject to limitations on the number of departments, even though the number was raised in successive stages (Tingsten in SOU 1938:14). Germany may boast of having only 17 major government departments, but experience of such gigantic bureaucracies suggests that the traditional division between department and administrative agencies is advantageous for Sweden.

The division of responsibilities between government departments would scarcely seem to obey any general principles. Discovering a rational structure for the organisation of government ministries is a dream of long-standing. After a few years, new functional and political requirements and the need of coalition governments to rearrange the system manage to catch up with every reform. As in other countries, the Swedish constitution is more reminiscent of the organic way a garden grows than of a manufactured product.

A degree of ambiguity in the parliamentary system also provides a measure of freedom of manoeuvre for those in power. Modern governments, as they have evolved in Great Britain, Germany and Sweden for example, allot the prime minister a key role and do not require narrow limitations on leadership. The Swedish constitution does not impose any barriers to developing a powerful executive. In parliamentary systems, leadership is shaped less by the constitutions and more by the balance of power in the party system. Elsewhere as well, though particularly in Sweden, parliamentary government functions as "representation from above". From a strictly democratic perspective, this may appear to be negative but democracy also imposes requirements for leadership and effective government. On two out of three issues, popularly elected representatives follow public opinion but in a third of cases they follow their own convictions and try to avoid making populist concessions to short-term opinions (Esaiasson & Holmberg 1996, p. 310 ff.).

The balance of power between government and parliament has been altered through institutional reforms. One example is the new budgetary procedure, which involves parliament first laying down the boundaries of the total expenditure and income of the budget and then allocating funds to the various areas of expenditure. In practice this has meant greater power for the Government Offices and, within parliament, for the Standing Committee on Finance (Pierre & Widfeldt 1997, p. 499). As a result Sweden has fallen in line with developments in a good many parliamentary systems; many examples can be found of regulations which give a right of veto to the finance minister and/or parliament's finance committee. One of the paradoxes of recent years is that only a powerful executive can rein in the expansion of the state.

The English word for the exercise of the art of government is *control*, which derives from the limited role of the executive during the era of the separation of powers. While terms corresponding to the German *Steuerung* exist, they are used in English-language academic literature primarily by American social scientists with a German background, such as Karl Deutsch and Amitai Etzioni. The Swedish word *styra* (steer, govern, rule) lies at the heart of the concept of *styrelse* (rule) and reflects the top-down perspective of the Swedish concept of representation. It finds expression in active leadership within the framework of democratic accountability and also makes it possible for minority governments to conduct a relatively effective decision-making process. Otherwise Sweden and the other Nordic countries would scarcely have been able to create such extensive welfare states. Major changes have not been founded primarily on broad parliamentary majorities but rather on a consensus between the elites which cannot be brought about by constitutional reforms.

A Federal Sweden?

Only two of the major democratic systems, Canada and Belgium, have implemented constitutional reforms in order to hinder ethnic splits. The demands of the Same people for greater auton-

omy do not even approach the force of the claims made by New Zealand's Maoris.

The need for greater decentralisation and regionalisation has posed challenges to both unitary and federal systems. Under Willy Brandt's government, the German Federal Republic was forced into setting up a constitutional committee of inquiry which proposed federally oriented constitutional reforms in order to strengthen the power of the *Länder* over legislation. The perennial issue of the territorial structure of the federation was made the subject of a special commission of inquiry (Ernst-Kommission). The commissions of inquiry were, however, primarily of benefit to constitutional experts; scarcely anything was actually implemented. Not even reunification or the incorporation of the five new federal states of East Germany lead to any federal reform. The German *Länder* made use of reunification and European integration to increase their powers in the organs of central government, instead of improving the operating practices of their own legislative bodies (Batt 1996, p. 35).

A federal state such as Germany may assert that its system is working and that major reforms are therefore unnecessary. However, the unitary states also entered a period of crisis. Reactions varied. Figure 2.1. shows that there are four different ways to increase autonomy with the aim of solving territorial conflicts.

Figure 2.1. Methods of Increasing Regional Autonomy

	The rights of the regions	
Political culture	Equal rights	Unequal, modified rights
Proportional	Federalism, moderate egalitarian *Austria, Germany, Russia*	Diversified regional autonomy *Spain, Italy*
Majoritarian	Equal rights *USA*	Devolution *Great Britain*

If the regions are given different rights, conflicts tend to deepen and if the electoral system is majoritarian in orientation the problems tend to be made worse. Both these problems are absent

from Sweden. However, Sweden, too, has been made to feel the force of the need to decentralise. Sweden would appear to come closer to the partial self-government for certain regions of the devolution-model. Unlike in Great Britain, this country lacks the ethnic and regional characteristics which would argue in favour of different, modified rights—thus far at least.

The nature and identity of the county councils has long been unclear. They have tried to get away from the dominance of health-related issues by entering the sphere of regional planning; the advent of the metropolitan county councils (*storlandsting*) (Stockholm 1971, Skåne and Västra Götaland 1999) has accorded them the task of integrating the major cities with their surroundings. Moreover, decentralisation does not apply solely at the municipal level. The advent of neighbourhood councils has brought back into the spotlight demands for direct elections; such elected neighbourhood councillors would then replace the current neighbourhood councils which are appointed indirectly on the basis of the allocation among the parties of the seats in the municipal council.

The problem of regional imbalance shows that any real federalisation of Sweden would encounter enormous problems. Sweden is a country with a large surface area, but the population is concentrated to a great extent in the major metropolitan areas. The traditional provinces have their place on the tourist maps but do not form part of political reality. In contrast with Great Britain, Swedish regions do not enjoy a sufficiently strong degree of autonomy to allow them to develop into the fundamental units of a federal state. Regional and local self-government may, of course, be strengthened and clarified but federalism is hardly an appropriate model for Sweden.

A New Electoral System?

In the process of democratising the democracies, changes to the electoral system are the most common constitutional reform. Sweden was the second country in Europe, after Belgium, to convert to proportional elections. This tradition means that any re-

turn to majoritarian elections is scarcely on the agenda, particularly in the light of the value placed on compromise by the culture of consensus. Most countries have also been content merely to tinker with their proportional electoral systems. However, during the 1990s two exceptions stood out.

New Zealand abandoned the British first-past-the-post model and introduced a proportional system with elements of preferential voting along the lines of the German system. One important reason was the desire to satisfy the demands for better representation for ethnic minorities, the Maoris in particular (Ingh 1995).

Italy moved in the opposite direction and changed from a proportional electoral method to one of a more majoritarian kind. The reason was not to increase fairness as in the case of New Zealand, rather the state of profound crisis in which the parliamentary system found itself. In a popular referendum held in 1993, 83 per cent of voters supported the reform. The new system means that three quarters of the seats in both houses of parliament are distributed by majoritarian election in single-member constituencies. The remaining quarter is made up of proportional top-up seats, which has allowed several smaller party groups to survive. The raised expectations that the electoral reform would replace the old corrupt system with a new democratic era have not been met. The outcome was not a party system made up of two blocs, but rather three. Since electoral alliances are permitted, this served to dash hopes that the electors would be able to call the government directly to account. The regional fragmentation of the party system increased, particularly in the north of the country owing to the dominance of Lega Nord. Although weakened, the centre parties survived (Freund 1995, p. 61).

Constitutional experts had long opposed a more comprehensive reform of the electoral system. Norberto Bobbio asserted that it would be unfair to allow two established and venerable parties such as the Liberals and the Republicans to disappear as a result of a constitutional reform. The constitutional change of 1993 led to a party political landscape which was considerably changed although still recognisable. A number of smaller party groups disappeared. The Christian Democrats stood on the edge of ruin, but survived as the *Populari* and gained 11 per cent of the

votes cast in the election of 1994. Centre parties of a politically ambiguous character also survived.

The Italian reform is a striking example of half-hearted constitutional change. Majoritarian elections were desired but not too much; *maggioritario ma non troppo*, as two political scientists described the system (Bartolini and D'Alimonte 1995). The reform was a compromise. Several parties argued for a purely majoritarian electoral system with balloting in two rounds, along the lines of the French model. Conservative contributors to the debater warned that the majoritarian model would do violence to Italy's political culture (Panebianco 1994, p. 1). An additional factor was the ambition to provide popular support for the reform. The voters were asked to assess the complicated formulae of electoral mathematics. The electoral experts wanted a comprehensive and logically consistent reform, however, this proved difficult to explain in simple yes-or-no alternatives to the voters.

The debate in Italy was marked by continual attempts to calculate the advantages for various parties and groups. Sartori, a veteran contributor, took part in the day-to-day debate and provided a cautious recommendation for the French model, but only on condition that the reform led to a change in the party system. Criticism of the *partitocrazia* of the established political class was a recurrent theme. However, parallels with France could only be drawn with difficulty. It turned out to be particularly problematic to distinguish the impact of the electoral reform from that of the transition to a semi-presidential system which was implemented at the same time.

Western European experience of electoral reform shows that the effects of the changes are complicated to assess. For many years, the Germans had been told that Hitler's accession to power could have been avoided if Germany had had a British electoral system, until retrospective scenarios made it more probable that the Nazis would have come to power even earlier than 1933 if the country had had a majoritarian electoral system (Falter 1991). For two decades, French Socialists had condemned the French electoral system as damaging to the Left, until in 1981 Mitterrand discovered that de Gaulle's system actually favoured the Socialists once the party had passed a particular threshold of support.

The only lesson Sweden can derive from these European ex-

periences is what should be avoided. Sweden has chosen to go its own pragmatic way. The electoral system was reformed in tandem with the partial constitutional reform and the first elections under the new rules were held in 1970. It was not long, however, before various proposed adjustments started to be discussed; one example being the proposals of the Democracy Committee (SOU 1987:6). As happened in many countries, the idea was put forward of reducing the size of parliament, although no such reform has seen the light of day. On the other hand, the political parties did agree to a return to quadrennial parliamentary terms of office; the future of the joint election day remains uncertain. After a long process of official inquiries and debate, a model was put forward for an increased element of preferential voting (SOU 1993: 21). Preferential voting was launched as a nationwide measure at the general elections of 1998. However, this was the very election in which what was made most clear was that the fragmentation of the party system was leading to ever more complicated conditions for minority governments. The limitations of the technique of minor partial constitutional compromises had become evident (see also chapter 5 below).

In a country seeking to find the balance between fairness and effectiveness, freedom of manoeuvre is limited. One of the arguments for introducing the four-per-cent threshold was to keep the Communists represented in the Riksdag. The German five-per-cent threshold was chosen to keep the Communists outside parliament. In Germany, it would be impossible for Social Democrats on the left wing to use tactical voting to help their "four-per-cent comrades" (Wörlund 1995, p. 286). This minor comparison illustrates the differences in political culture. The only similarity between the countries currently is that constitutional reforms are becoming cumbersome in a system with extensive issue-representation and a large number of self-blocking mechanisms.

More Direct Democracy?

Like other countries, Sweden is affected by a crisis of party identification, volatile electoral campaigns, falling confidence, a frag-

mented party system and the growth of populist movements, primarily in opposition to European integration. These various trends are not, however, as uniform as some writers pretend, but they are sufficiently serious to be considered as arguments for constitutional reform.

The youth rebellion during the 1970s led to new interest in direct democratic methods, such as popular initiatives and referendums. The more the sovereignty of parliament was emphasised, the stronger the opposition to incorporating a direct democratic element in representative democracy. Fears that direct appeals to the people would lead to a populist form of democracy faded, however, with the rise of the party state. Interview surveys show that differences of opinion between voters and elected representatives are the exception rather than the rule.

One example is the option of using a popular referendum to stop a law passed by parliament coming into force. Popular referendums of this kind have been held in Italy on matters which include a law on abortion and one on party finance. Usually the parliamentary majority is able to stop laws being abolished. In Austria the initiative for such negatively decisive referendums may be taken by a majority of parliament; in Denmark and Ireland, a third of parliament suffices to remit the matter to the people for their decision.

The scale of the literature on popular referendums is out of all proportion to its significance. Prejudices against this method have been strengthened by the circumstance that the majority of popular referendums are actually held in non-parliamentary systems such as those in Switzerland and in some of the US states with special direct democratic traditions. Most of the popular referendums held in parliamentary systems are usually controlled by the government or the president, this holds particularly true for semi-presidential systems (Smith 1976, p. 6).

The option of passing legislative power directly to the people has never developed into any real form of competition with the role of parliament. From the beginning, the German Federal Republic was genuinely opposed to plebiscites as a result of the trauma of the Weimar period. While the collapse of Germany's first parliamentary republic had many causes, these can scarcely in-

clude the two popular initiatives (1926 and 1929) neither of which resulted in a majority of any kind. European debate usually overlooks the fact that for a long time it was Australia and New Zealand that topped the referendum list, although in those countries, too, it is a matter of no more than a couple of dozen referendums. Of the European parliamentary systems, it was Denmark which most frequently held popular referendums. After 1974, it is Italy which takes centre stage as the country of direct democracy with around 40 popular referendums; most of these are normally held in tandem with general elections. German fears were shown to be groundless in Italy; the people proved equal to the task. A barrier against misuse is provided by the rule that a majority of those entitled to vote must participate in the referendum. During the 1990s, only three referendums failed to reach the percentage stipulated. This means that popular referendums do not serve as an instrument for minorities, as is the case in Switzerland.

One positive aspect of popular referendums is that they have an educational effect and thus a civilising impact on the political system (Beret 1985, p. 390). The commonest term in international use, referendum, indicates that the method is a means of putting an issue to the people (Latin *referre* means to submit). Referendums are thus the exception, not the rule. Popular referendums may serve several different functions, such as providing the people with the possibility of expressing their displeasure at the ruling majority. In the Nordic countries, this function has been developed as a response to the bureaucratic rule of the monarchy, which continued to leave its mark on public power long after the polity became parliamentary and democratic (Einhorn & Logue 1998). In Ireland, popular referendums have served as a safety-valve as they make possible the mobilisation of the moral protests of the religious majority against the secular governing elite.

Popular referendums may be used to initiate political processes, such as accession to the European Union, or to revoke laws as in Italy. The French tradition of the plebiscite is rather an expression of efforts to find popular legitimacy for decisions which have been made from above by the president. The most extensive use is, however, the veto function, which may be illustrated by the demands of the Nordic temperance movement for referendums

on prohibition. In more recent times, opponents of nuclear power —in countries which include Sweden and Austria—have made use of referendums in order to focus attention on the risks of nuclear power. The possibility of formulating an opposition has usually been to the advantage of minor parties. In some countries, such as Switzerland, the electoral thresholds have been raised in order to prevent abuse.

The question of whether it makes any difference has been applied to the referendum, as it has to all other political institutions. Referendums have been considered to make coalition politics more difficult, although the lesson of history is that elite consensus serves to stop popular referendums from breaking up a fundamental accord (Neidhart 1970, p. 158). In periods of popular resentment against the party state, referendums have been praised as a means of breaking the isolation of the political class. Real life has rarely, however, followed this scenario. Only in exceptional cases has a government left office after the negative fall-out of a referendum; Norway is one of the few examples (Troitzsch 1979, p. 118 f.). In contrast, governments have been able to survive defeats in referendums such as the nuclear power referendum in Austria 1978, the Australian Labor Party and the Italian Christian Democrats in the divorce plebiscite of 1974. Although President de Gaulle resigned in 1969, his party remained in power. Radical forces have cherished hopes that referendums will lead to renewal, but they have frequently served as a conservative veto in the form of a sort of "third chamber" (Bogdanor 1981, p. 1, 14).

Only in rare cases has the mobilisation brought about by a referendum helped to change the party system, as happened in Denmark and Norway (Luthardt 1994, p. 83). On occasion, the voters have stopped the implementation of reforms that had long been necessary. In Sweden, the people voted against driving on the right and, in 1969, Danish voters opposed lowering the voting age to 18 (Nielsen 1970). Only rarely does the popular will prove to be as uncontrollable as it did in the Norwegian EU-referendums of 1972 and 1994, when the people chose a different course than that of the parliamentary majority.

Comparative studies provide evidence that popular referendums can scarcely be said to be a certain route to change. The ref-

erendum is a neutral instrument capable of carrying out a variety of aims and tasks (Butler & Ranney 1978, p. 234). Referendums can alleviate the feelings of powerlessness of the population. However, the price comes in the form of very simplified formulations of the alternatives, which does not always do justice to the complexity of modern decision-making.

The question, ultimately, is whether referendums make democracy more effective. The comparisons fail to provide any unambiguous results on this point as well. Italy lies at the apex of the referendum list, but no one is suggesting that this country works any better than other parliamentary democracies. Switzerland has unquestionably had enormous success in terms of its economy and welfare policy but do these have anything to do with referendums? A number of observers suspect rather that Swiss referendums primarily favour the powerful special interests. How otherwise could protection for grain farmers, the domestic milling industry and the interests of flour and bread consumers have made their way into the Swiss constitution (art. 23 bis)?

The clearest finding in international research is that direct democracy constitutes a barrier to high taxation (Wagschal 1997). This is the case in Switzerland and several US states. Parliamentary systems may also contain rules which prohibit popular initiatives aimed at increasing public expenditure (Italy, art. 75.2). However, the keenness of parliamentary elites to respond to demands to decrease taxation has shown itself capable of achieving the same result. There are many good reasons for reviving elements of direct democracy but they have more to do with political symbolism than with effective politics.

Compared with the international trend, Sweden has developed a pragmatic attitude to this method of consulting the people. The four referendums in the pre-European era (prohibition 1922, driving on the right 1955, the pensions issue 1957 and nuclear power 1980) all contained powerful emotional elements. Norway and the bare majority in the Swedish EU-referendum (52.3 per cent voted yes in 1994) show how close the people can come to functioning as a power of veto. Elected representatives and the top—down representation of indirect democracy often prove to be more innovative than the voice of the people. International ex-

perience teaches us that referendums remain a weapon in the hands of the political class. Referendums can correct political proposals, but they can rarely compensate for a lack of proposals; they can "repair a government's sins of commission" but they cannot "repair a government's sins of omission" (Bogdanor 1997, p. 199).

What is Left for Constitutional Engineering?

The conclusion of this review is that most of the major constitutional reforms now being discussed in Europe are of little relevance to Sweden. Sartori is right that constitutional changes have to be based on judicious predictions of the possible consequences. Elster's alternative, using a broad ideal of justice, can hardly be appropriate in a period in which Sweden is once more prominent as a model; this time as the prototype of how a comprehensive welfare state can gain control over its budget and reduce corporatism (Gustafsson 1989, p. 164; Jochem 1998, p. 112 ff.; Lindbeck 1990, p. 74).

However, constitutional reforms are necessary for other reasons. The need for action arises from globalisation and Europeanisation. Sweden is in the process of discovering that an ever greater part of national politics is being decided at the European level. In Germany, as much as 20 per cent of all legislation, and 6 per cent of all important statutes, originate in the European Union (von Beyme 1998, p. 38). The figures for the remaining EU-countries are probably at the same level. Sweden, however, has been a member for too short a period to have had the same, extensive experience as the six original member countries.

Not only does the European Union control the political agenda of the member countries by means of directives but also, more discretely, and much more effectively, through the system of judicial review at the Court of Justice. Step by step the European legal system is creating a uniform body of European law in many countries.

In several countries, the constitutional courts serve as an instrument for asserting the sovereign rights of the member states. The impact of Europeanisation is also noticeable in countries

which have hitherto lacked a constitutional court, such as Great Britain and Sweden. One conceivable constitutional reform would be the establishment of a constitutional court, although this would involve major constitutional change.

The system of parliamentary ombudsmen (JO) in Sweden was previously considered to provide an alternative to a constitutional court. The ombudsmen were seen as forming a flexible institution which was capable of adapting to changing needs (Wieslander 1998, p. 58). The possibility of asserting the rights of individuals through the parliamentary ombudsmen was developed during a historical period characterised by a relatively enlightened monarchy. This was a period "when popular grief was channelled through the individual right to petition the king". Sweden thus constituted a form of *Gesetzesstaat* (a state in which legality is observed) but was never forced to develop a more extensive form of constitutional government, a *Rechtsstaat*. The historical legacy of Continental Absolutism led to individual rights being formulated as inalienable rights guaranteed by institutions which were independent of government. In the Nordic countries, the monarchies were less repressive and the parliament of the estates were almost continuously at work. As a result the system of parliamentary ombudsmen proved adequate to the task. Within the EU, it is the Continental tradition which predominates, which adds further weight to arguments for introducing a European system for the protection of rights.

The French unitary state lacks a tradition of judicial review of the decisions made by the highest organs of government. However, step by step the French Constitutional Council (*le Conseil constitutionnel*) is developing into an increasingly effective court (Favoreu, in Landfried 1989, p. 81 ff.). In the light of the system of judicial review provided by the European Court of Justice, it is desirable to harmonise institutions at both the European and the national levels. Moreover, a constitutional court would in no way exclude a system of parliamentary ombudsmen. Germany, for example, has had a military ombudsman and this has not led to friction with the right of judicial review of its constitutional court.

The same developmental trend in favour of Continental institutions can be discerned in relation to independent central banks.

In Scandinavia, too, it has been pointed out that an independent central bank need not be in conflict with democracy (Smith 1998). The German *Bundesbank* was originally regarded with deep distrust by other European countries. Nevertheless the German system has become the model as a result of the Treaty of Maastricht and EMU. As with the right of the courts to exercise judicial review, it is useful to have powerful nationally based institutions which can look after national interests and can explain and interpret developments to the country's citizens. As a federal system, Germany demonstrates how the prevalence of such institutions at both the level of the *Länder* and at national level helps to strengthen the system as a whole.

During the foreseeable future it would seem improbable that major sections of welfare policy will be harmonised at the European level. Graduated demands being made on national sovereignty seems more credible. The organisation of the unemployed in France presumably heralds attempts for populist reasons to repatriate welfare policy to the individual countries. Academic literature in Europe varies on the issue of future scenarios. Somewhat paradoxically it turns out to be writers on the Left, such as Stephan Liebfried and Claus Offe, who argue for greater European integration within the field of social affairs. The explanation is that they consider that the EU has a greater capacity than the member states to carry out neutral interventions without reference to national structures. A number of studies, which are, however, contradicted by a good many others, have concluded that party politics plays a very subordinate role in the decision-making of the Commission (Morgan & Tame 1996; Landfried 1999). The main tenor of research is, however, that the key areas within distribution policy, education and culture should remain subject to national accountability. Whichever course the future takes, there is no doubt that the scope for the decision-making power of the national parliaments is becoming increasingly limited. The only areas of disagreement concern what form this process will take in different fields.

Continued *regionalisation* is leading to the popularly elected regional assemblies attempting to increase their power at the cost of the national parliaments.

As a result of continued *Europeanisation*, an ever increasing number of areas which were previously regulated by the national parliaments are becoming subject to EU regulation.

Paradoxically, continued *globalisation* would seem to be the only hope for the nation state. The World Trade Organisation is starting to retaliate against the EU for the measures the Union has imposed on the member states. The freedom of manoeuvre of the European cooperative organisations is being limited by the global level.

Disagreement over the details of how the national parliaments will reduce their welfare policy powers can only be solved by means of new classifications. Some writers refer to the consequences of the current standardisation of rules within areas such as industry and co-determination. Others distinguish between socially regulated measures on the one hand and distributive and redistributive decisions on the other. The former have undoubtedly been Europeanised by means of the Single European Act (art. 100a and 118a). The protection of the environment (section VII) may also be counted as belonging to the socially regulated sphere. The European Community in its old guise was only limited in this area to intergovernmental cooperation, since that time, however, this field has been Europeanised. When the supranational decision-making sphere is extended to include the working environment, health, consumer protection and environmental protection, the national parliaments will lose key decision-making domains (Majone 1996).

Nevertheless, there are cogent reasons to suppose that the most important parts of the welfare system will be decided by the national political bodies for a long while to come. The experience of real federations, in which the member states enjoy considerable powers, demonstrates that it is possible to maintain significant regional differences. In the US, California spent six times as much in social support per recipient in 1990 than the impoverished state of Alabama. If the old nation states have not proved capable of homogenising their welfare systems, it is unlikely that the EU will succeed. The resources of the EU correspond to only 4 per cent of the expenditure of the member states and the Union has only 1.3 per cent of the total GNP at its disposal. In the light

of the budgetary restrictions, it is scarcely credible that the member states will be prepared to alter the resource base for distribution policy. The relative progress registered by certain kinds of redistribution, such as regional policy, is not on such a scale as to affect the general direction of welfare policy. Responsibility for welfare policy will therefore probably remain with the national parliament, in common with defence and security policy. Sweden will probably "wait and see" only for a short while, as in the case of the EMU. Experience indicates that, after a period of reflection, Sweden will then act relatively decisively to implement the necessary reforms.

It is no accident that the Swedish language, like German, emphasises a concept like control. From time to time the combination of enlightened paternalism and the active involvement of interest groups has confused both foreign and domestic observers. European politics will have even greater consequences for the culture of politics than for its institutions. Within several fields, such as welfare and family policy, the Swedish tradition may come to be seen as much too restrictive. Over fifty years ago, a Swedish poet was even then complaining:

> "Here, in the tight, cosy Sweden
> of the long, well-fed moments
> where everything is shielded from the draught ... I feel cold."
> (Gunnar Ekelöf: *Non serviam*, 1945.)

3 Sweden as a Constitutional Democracy

A degree of scepticism is essential in any debate that concerns concepts as value-laden as popular and constitutional government.

We will focus attention here on the relationship between parliament, government and the public administration on the one hand and the courts of law on the other. This should not be taken to mean that the only problem worth discussing is the relationship between the judiciary and other public bodies. On the contrary, the degree to which the principles of constitutional government and the rule of law are observed should be measured using several different yardsticks. Of particular importance is the capacity of the system to prevent problems arising by investigating potential conflicts and listening to dissenting views even before laws and other regulations are passed.

Nevertheless, it is the relationship between the courts and political bodies which takes us right to the very heart of constitutional government. It is the courts that constitute the last resort for individuals, companies and municipalities seeking protection from the power of the state. It is therefore vital for reasons both practical and theoretical to shed light on the accessibility of the courts and their position in society.

A society frequently reveals its true colours through its use of images and words. Many countries consider the judiciary to be the third of the branches of government, equivalent more or less with the legislative and executive branches. All too characteristically it is the mass media that are usually described as the third power in Sweden. The courts of law do not count.

It is no coincidence that such a view of the courts holds sway in Sweden. This convention of language is consistent with the de-

scription contained in the Instrument of Government, the country's key constitutional document. Legal rules and legal institutions are an important part of the collective social reality. There is good reason to consider the constitution an authoritative source concerning the way official Sweden views both itself and its institutions, particularly as Sweden adopted an entirely rewritten fundamental law only a few decades ago (1974).

The classic tripartite separation of the powers of the state is embodied in the constitutions of many countries.[1] This symbolism can be quite clearly discerned in the Norwegian constitution of 1814 with its separate chapters for the executive, the legislative and the judicial powers. The same applies to the constitution of the United States of 1787. In the Danish constitution, in which the text of the 1953 version can be traced straight back on many points to the fundamental law of 1849, the tripartite structure is expressed in programmatic terms (§ 3). This paragraph was applied in dramatic fashion in February 1999, when, for the first time in its history, Denmark's supreme court rejected a law on "free-schools" on constitutional grounds as the law was considered to be in violation of the principle of the separation of powers. In the Belgian constitution of 1831, the corresponding separation is embodied in a chapter on the branches of government.

The fact that this notion is still in force can be exemplified by the Basic Law of the German Federal Republic of 1949, one of the most influential constitutional documents of the last half-century. It contains a special chapter devoted to the judiciary. Finland's new Instrument of Government contains a paragraph which lays down the separation of legislative, executive and judicial powers. The latter is "to be exercised by independent courts of law".

Sweden departs markedly from this well-established pattern. Although the subject of the law-courts appears as early as in the introductory chapter of the Swedish Instrument of Government, in both paragraphs 8 and 9 they are referred to together with the administrative authorities. This peculiarity is reinforced by chap-

[1] It may be noted that the term "state power" is to all appearances based on a mistranslation of the English *Estate* in the sense the word enjoys when used to characterise the parliamentary "estates" of previous eras (cf. Allern 1996, chap. 2).

ter 11 of the Instrument of Government which is concerned with the courts of law. The title of the chapter is "Judicial and General Administration". The coordination of the two concepts is developed in several of the more detailed prescriptions, including the very important paragraph which deals with that form of review of constitutionality known as *normprövningsrätten* (IG 11:14, see footnote 6). Not only the law-courts but also "any other public body" have the right to assert the principle that a superior statute should be given priority if it is infringed upon by a norm of lower rank (the principle of *lex superior*). The same is true with regard to the limitations (which are laid down in the rule that the error must be "manifest") which affect this principle in those cases where the lower of the two conflicting provisions has been passed by parliament or government.

It is quite obvious that this approach departs markedly from the view taken of the place of the courts in the apparatus of the state to be found in most European countries. The explanation lies in Swedish constitutional and political history, with its centralisation of the power of the state around the monarch, the government and the ministries (Smith 1990). There are a number of other features peculiar to this picture including the circumstance that anyone wanting to make a career as a judge is best advised to alternate service in the courts with service in government ministries and the Swedish tradition in relation to the implementation of legislation of laying great store by the preparatory works.

This aspect of the place assigned to the courts in the apparatus of the state does not, of course, provide a complete picture of the nature of constitutional government in Sweden. A foreign observer is struck in particular by the way in which Sweden, in its organisation of the executive power, differs from the ministerially-governed hierarchies which are otherwise predominant in Europe. The administrative authorities, which the Swedish Instrument of Government positions alongside the courts, enjoy far greater legal autonomy than is accorded to state bodies below the level of the government department in the rest of Europe. In those cases where more autonomous authorities can be found in other countries, these are the exception rather than the rule.

This Swedish peculiarity is interesting in two respects. The

most important is that it is, at least initially, suitable for diminishing the impression of weak courts created by the linkage of "the judicial" and "the general administration". In actual fact the relation of the administrative authorities to political bodies is, to a greater extent than in other European countries, of the same character as that of the courts. This applies in particular to the administrative courts, which have more wide-ranging powers on important points than comparable courts in other countries. Furthermore, this distinguishing feature of the situation in Sweden illustrates the fact that bodies which enjoy a certain legal autonomy in relation to the political organs may have an important role to play concerning other matters than those normally dealt with by law-courts. We will have cause to return to both these aspects subsequently.

Democracy and Majority Rule

Conceptions of a term as lofty as "democracy" differ widely. The way democracy is understood in the Nordic countries frequently emphasises the freedom of the political majority to make whatever decisions it wishes.

Such a viewpoint makes it far from easy to accept that parliament, as the legislative assembly, should be bound by constitutionally defined norms. Nor do the propositions of the Instrument of Government concerning the nature of the polity contain any explicit rule to the effect that the decision-making body should be bound in this way. If democracy is understood simply as government by the majority, it is difficult to argue that parliament and the government, which derives its powers from a popularly-elected body, should be bound by existing legislation. This is the point at which the limitations of constitutional government are reached.

The SNS Democratic Audit uses a different starting-point for its notion of democracy. While a democratic society is based on the foundation of popular sovereignty, popular government must be complemented by the principles of constitutional and effective government. A definition of this kind prevents majority rule from

being the only principle, and also questions whether it should always be superior to other requirements.

An alternative to terminology of this kind would involve accepting that democracy is equivalent to majority rule, even though the system of governance must also satisfy other requirements than the majoritarian principle. The need for a minimum set of fixed playing rules and the desire to guarantee key rights and freedoms, in order to give the individual and minorities greater protection than the majority is sometimes willing to accord them, constitute some of the complementary considerations of this kind.

The choice between these two perspectives has no effect on the outcome. The freedom of action of the majority is limited by the fact that the law is binding on everyone until it is changed. The activities of the administrative agencies also have to keep within the confines the law lays down.

These key components of constitutional government ought not to be in conflict with the Swedish constitution on the level of principle at least. Enshrined in the very opening paragraph of the Instrument of Government is the declaration that "Public power is exercised under the laws". This principle of key importance is subsequently expanded upon in the text. The question is rather how laws should be interpreted and to what extent they can be asserted by independent courts of law and bodies other than political agencies such as parliament, the government and municipal councils.

Judicial review of laws and regulations that have been passed by parliament itself cannot, however, be based on the first chapter of the Instrument of Government. It is true that the values that underpin constitutional government may tend towards a right to review legislation; ultimately, it is only through such an arrangement that constitutional government can also regulate the topmost level of political life. But the concept of constitutional government is far from clear-cut and there is no agreement as to the detailed nature of the contents of the phrase. As such a general reference to constitutional government is an insufficient argument for a system in which the judiciary have the right to review legislation.

A change introduced in 1979 took the Swedish Instrument of

Government one stage further. This has meant that the Swedish constitution is now following essentially the same course as the vast majority of democracies after 1945. The current norm in democratic countries is for the judiciary to play a key role in upholding the constitutional playing rules (Smith 1997). Whether this role is performed by special constitutional courts[2] or by the ordinary courts of law—as is the case in countries such as the US, Norway and Sweden—is of subordinate importance in relation to the taking of this key step.

The trend during the most recent decades towards assigning greater weight to the constitutional aspects of the rule of law has been dramatic. There are currently only a very few countries in Europe that have not introduced one form or other of judicial review of the compatibility of legislation with the constitution.[3] The British Westminster-model has lost much of its attraction. The dogma of the absolute sovereignty of parliament is currently being fiercely questioned, in Europe outside the Nordic countries at least.

Additionally, many democratic countries have accepted the principle that one or more international courts may make decisions that have a major impact on the legal system in individual countries. The most important examples are the European Court of Human rights in Strasbourg and the two European Union courts in Luxembourg (including the court of first instance). Sweden has subordinated itself to all three.

Against this background, it is scarcely surprising that Sweden has taken the decisive step of introducing the right to judicial review of legislation (IG 11:14). Seen from the European perspective, it is rather the major limitations to this right that attract attention. On several points these are of such a nature as to single out Sweden on the European scene.

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[2] Important examples in Europe are provided by the German *Bundesverfassungsgericht*, the French *Conseil constitutionnel* and the Italian *Corte costituzionale*. See e.g. Favoreu 1996 and Smith 1991 concerning judicial review on the European model.

[3] As, for example, in the Netherlands and in Great Britain, which does not even have a written constitution. In practice, though not in principle, Sweden may also be included within this group.

Constitutional Democracy

The course of the ensuing discussion proceeds via the concept of constitutional democracy (Smith 1994a). The transition from an autocratic to a constitutional monarchy was a major step along the road to the formation of the kind of democratic states we are familiar with today. The power of the prince could no longer be exercised solely by right of inheritance, tradition or the grace of God. The exercise of power had instead to be based on a written constitution and had to keep within the framework set out therein. Another key element was that the power of the ruler had to be shared with others.

According to the introductory paragraph of the Norwegian constitution of 1814, the form of government which followed the Dano-Norwegian autocracy was to be a "limited monarchy". This expression may sound odd today but it provides a telling phrase with which to convey the central message. The power of the monarch is to be *limited* in relation to the historical precedents. It is *restricted* to the extent that it has to comply with the constitution.

In Sweden, too, popular government is based on a written constitution. The gateway paragraph of the Instrument of Government declares that all public power proceeds from the people. The Instrument of Government also contains the principal rules pertaining to the composition of parliament and other organs of the state, how they should exercise their authority and what limitations are set to their powers and responsibilities.

It may be objected that such a description is only a formal one. But the status of the Instrument of Government as the cornerstone of the polity is also a consequence of the practical reality that in larger societies democracy cannot be enacted "in the market-square" without some form of normative practice. Rules have to be established to determine how decisions can be reached in the event of disagreement.

This makes it legitimate to characterise Swedish democracy as constitutional as well. Exploiting the phrasing in the Norwegian constitution, the Swedish polity could be described as a limited democracy. Both terms are identical as to their contents. The latter is, however, more provocative and thus provides more food for thought.

To all intents and purposes, Swedish democracy is indirect. The supreme decision-making body of the representative system is parliament, whose status is founded in the Instrument of Government. Members of parliament are elected by enfranchised citizens according to the electoral methods laid down in the third chapter of the Instrument of Government. Binding decisions can only be made in accordance with the provisions contained in the fourth chapter of the Instrument of Government and in the eighth and following chapters. The contents of the decisions must lie within the limits which follow from the rights and freedoms guaranteed by the constitution. They must also comply with the extensive limitations on the freedom of action of parliament which are a consequence of Sweden's relation with other countries.

Seen in historical terms, the transition to a parliamentary system of government has widened the scope enjoyed by parliament, and in consequence that of representative democracy, in relation to the executive power. In terms of the formal constitution at least, the counterbalance to the power of the parliament, which was previously enshrined in the requirement for unity between the legislative and the executive powers, has now disappeared. What this means from the historical perspective is that one of the key arrangements for guaranteeing the established constitutional order is no longer in force (Elster 1995).

One question is whether new forms of counterbalance to the freedom of action of the majority, as embodied through the parliamentary channel, have arisen instead. In legal terms the answer is affirmative, as since 1980 the courts and other public bodies have had the constitutionally guaranteed right and duty to refuse to implement provisions which "conflict with a provision of a fundamental law or with a provision of any other superior statute" (IG 11:14). This system of judicial review is designed essentially to limit the freedom of action of parliament. Subordination to the Instrument of Government sets limits to the freedom of action of the legislators.[4]

[4] Detailed outlooks which includes the comparative background of the judicial review of legislation and its legitimacy in a democratic polity can be found i.a. in Smith 1993, Nergelius 1996 and Holmström 1998.

These limitations are primarily aimed at protecting fundamental rights and freedoms but also encompass a good many issues of importance concerning the allocation of responsibilities among public bodies, including the requirement that many decisions should only be made by parliament, as well as those of a procedural nature. Within all these fields the role of the courts has to be understood from the point of view of their place in the constitution which lays great store by majority rule and the freedom of action of the majority.

The Courts and the Government 1: Judicial Review under the Constitution

The historical tradition of centralising executive and judicial authority under the power of the Crown has left its mark on the relationship between the courts and the government in Sweden. This tradition finds a peculiar embodiment in one of the small number of provisions of the Instrument of Government which directly conflict with the centralisation of power around parliament as "the foremost representative of the people" (IG 1:4).

The constitutional article on judicial review (IG 11:14) gives "a court or any other public body" the power to refuse to implement a provision which is in conflict with a provision of a fundamental law or with a provision of any other superior statute. This power also applies when the provision has been adopted by parliament or government. In this case, however, the right only applies when "the error is manifest". A court may therefore arrive at a decision that the constitution has been infringed but that the court is nevertheless forced to accept the provision on which it has to rule because the infringement is not manifest.

It is easy to see that the special legitimacy which attaches to *parliament* as the supreme popularly elected body poses challenges of a different kind in relation to the judicial review of legislation than to the review of decisions approved by other public bodies; we will return to this aspect later. However, the idea of according the *government* the same privileged status as parliament in relation to the courts calls for more detailed comment.

In other European countries it is customary to deal with the scrutiny exercised by the courts on governments and on parliament as separate and relatively unrelated matters. The key principle is that government decisions, once normal procedural requirements have been satisfied, can be taken before the courts in order to test whether they conform with the limitations imposed by the legal provisions to which the government is subject. The courts then make their assessment based on approximately the same rules which apply when they scrutinise other aspects of the executive power.

Like its counterparts in other Western countries, the Swedish government is bound by law. One of the fundamental rules of the constitution is that public power is exercised under the laws. Another consequence of the article concerning judicial review is that the organs of the state are also bound by the constitution, except to the extent that they have the power to alter it. The government is therefore bound both by constitutional law and general legislation and it is this circumstance which gives the courts a judicial foundation on which to review government regulations.

There are moreover powerful arguments in favour of this kind of scrutiny. The fact that it is the government in the first instance which makes decisions concerning the exercise of administrative authority in relation to individuals, companies, etc. must be taken as meaning that these decisions are particularly important. This provides a corresponding need to be able to have their legal aspects tested in a court. Those cases where government decisions have been made after an appeal highlight the fundamental principle that the hearing of an appeal within the executive branch should not rule out the subsequent possibility of getting the legal aspects of administrative decisions reviewed by a court. We shall be returning later to appeals on issues of reasonableness.

It is hardly surprising in this light that the general solution in the Europe of today is for the courts to go equally as far, roughly speaking, in hearing appeals against the application by the authorities of current legislation, irrespective of whether the decision has been made by the government or some subordinate authority. It is difficult to find any reason whatever to enjoin the courts to be as restrictive in their oversight of the government as they

should be, according to a widely accepted view, in relation to parliament.

However, in the case of the Swedish Instrument of Government, the opposite applies. The government is accorded the same privileged position as parliament. These two bodies are, nevertheless, not equal in the legal sense. The primary limitation on the freedom of action of the legislature is that imposed by the constitution while the government is obliged in addition to comply with the entirety of existing legislation. The consequence in reality is that the privilege accorded the government in relation to the courts is far more extensive than that enjoyed by parliament. Moreover, the position of the government is better protected than the remainder of the public administration.

While there are thus good reasons for the courts to exercise some restraint in forcing on the popularly elected parliament their views on constitutional issues, it is difficult to argue that the government should enjoy the same freedom in relation to legal issues concerning the fundamental law within the framework of a parliamentary polity like that of Sweden.

The stipulation in the Instrument of Government that public power is exercised under the law sets out the primary constitutional imperative. A defining feature of constitutional government is that the judiciary should be able to implement this rule in any particular case where other reasons of major importance do not weigh against it. Should the government be of the opinion that the verdicts of the courts are unacceptable as the basis of legal norms in the future, it is always free to suggest to parliament that it changes the laws on which the verdicts were based.

This means that the Swedish government actually has less need than other bodies of "protection" from the courts. It is, after all, not the courts but parliament and government which have the last word about which laws will apply in future. On the other hand, it is the courts which should have the last word on the implementation of the legislation in force. The principle of an administration which is bound by the law of the land counts for more here than the desire that the government should be above the law in certain matters.

The political composition of the government is therefore not a conclusive argument for giving it greater freedom in legal matters

than other public bodies. Once more, it is the peculiarity of the Swedish tradition with its concentration of state power that appears to offer the only probable explanation for the privileged position nevertheless enjoyed by the government. An external observer would find it difficult to come to any other conclusion than that this explanation is inadequate as a defence of the current set-up. It is worth noting how little attention has been devoted to the peculiar status of the government in the debate in Sweden (cf. Bengtsson 1998, p. 57).

The Courts and the Government 2: Judicial Review of the Legality of Acts of Government

Until very recently the guiding principle in Swedish law was that any complainant having his or her matter decided by the government was unable to have that decision reviewed by another body independent of the government. The Supreme Administrative Court would have provided an obvious forum of this kind.

This state of affairs has to be understood in its historical context. The government (*regeringen*) and the Supreme Administrative Court (*regeringsrätten*) have been closely linked, as their very names in Swedish suggest. The Supreme Administrative Court was established in 1909 with the aim of dealing with certain kinds of appeal against administrative decisions that were previously handled by the government, which was long designated officially as the "Royal Majesty" (*Kungl. Maj:t*) or the Crown. It was never a question of allowing the new collegiate body to rule on matters which had been decided by the government acting as the first instance. It would have been an utterly outlandish idea to allow the new department for appeals to intervene in the operations of the government.

The situation remained to all intents and purposes unchanged until the beginning of the 1980s. It was then that the European Court handed down its verdict in the well-known Sporrong —Lönnroth case,[5] which was to prove such a challenge to the way

[5] Ruling 23 sept. 1983, Publications of the European Court of Human Rights, Series A, No. 5288. The case concerned the effects of long-term expropriations and the prohibition of construction in relation to the residential properties of the appellant.

the Swedes saw themselves. This matter was followed by several similar cases and it soon became clear that an arrangement in which government decisions, and many other decisions made by administrative authorities, could not be made subject to judicial review was in conflict with the right to a fair hearing before a court of law, which is contained in article 6 of the European Convention on Human Rights (Danelius 1997, p. 125 f.). None of the other member countries of the Council of Europe has suffered such a spate of guilty verdicts on this point. Although Sweden's unique position can be explained in historical terms, history fails to provide an adequate defence for the current situation.

In recent years Sweden has made major departures from this historical inheritance. Of key importance here is the Law on the Judicial Review of Certain Administrative Decisions (SFS 1988:205, see e.g. Warnling-Nerep 1991).[6] This makes it possible for the Supreme Administrative Court to rule on whether certain administrative decisions on the part of the government "are in conflict with a legal norm" (*rättsprövning*). If the court decides that such is the case, and where it is not likely that the error is unimportant, it should quash the government's decision and remit the matter to be dealt with differently. This system of judicial review has also begun to have an impact in practical terms.[7]

The new system has meant that the constitutional principle

[6] For the sake of terminological clarity, several distinct concepts are summarised here. *Normprövning* is the term for the power of a court or any other public body to refuse to apply a provision because it is in conflict with a provision of a fundamental law or with a provision of any other legal norm superior to the one challenged (IG 11:14). When the provision is a statute, i.e. it has been passed by parliament, the term used is *lagprövning*. The form of judicial review known as *rättsprövning* refers to the particular form of appeal wherein the competence of the court is restricted to reviewing the legality of the decision; this option applies to certain administrative authorities and certain administrative matters decided by the government. *Laglighetsprövning* restricts the competence of the courts in similar fashion; a member (i.e. inhabitant, property owner or tax payer) of a municipality may, for example, appeal a local government decision to an administrative court, through the local government appeals procedure, in order for a ruling to be made as to whether a municipality has acted *ultra vires*.

[7] A notable example is provided by the 1997 case in which the Supreme Administrative Court quashed a government decision to permit the construction of a tunnel through the national city park in Stockholm as part of the Norra Länken project. The Court held that the decision of the government was in conflict with the Law on Natural Resources. RÅ Ref. 1997:18.

that all public power be exercised under the laws has become of greater importance to the government as well. As a result this aspect of constitutional government in Sweden has fallen more closely into line with the normal state of affairs in the rest of Europe (see e.g. Vedel and Delvolvé 1990, p. 505 f.).

However, prior to the reform this process took a long time to develop and happened only reluctantly. Nor did the change go any further than was considered necessary to prevent Sweden once more being convicted of infringing the right to a fair hearing before an independent court on "civil rights" issues under the terms of the European Convention on Human Rights (Warnling-Nerep 1993). It is therefore by no means obvious that Sweden has abandoned her traditional view of the supremacy of politics over the law.

Conversely, some may consider that the institution of judicial review (*rättsprövning*) is unsuccessful in that it limits oversight by the courts to "whether the decision on the matter is in conflict with a legal norm". The court also has to be content with quashing decisions that conflict with the law instead of itself being able to make the final decision on the matter. Astonishingly, the guiding principle in Sweden continues to be that such limitations do not apply for the majority of cases which the administrative courts decide. In such cases, no boundary is drawn between the legality of the decision being appealed and its reasonableness, which is the usual approach in Europe. In Sweden the administrative courts can review both these aspects of the decision. In this respect the administrative courts have the same powers as the appeals institutions within the administrative hierarchy itself.[8]

On this point, too, awareness in Sweden seems to be poorly developed as to what is a normal, and desirable, division of labour between the government and public administration on the one hand and the (administrative) courts on the other. A gulf exists between the situation in Sweden and the normal situation in other European countries in relation to such a significant distinc-

[8] Other rules apply in relation to legal procedures such as local government appeals (*kommunalbesvär*, see footnote b and below) and the judicial imposition of a conditional administrative fine (*utdömande av vite*), see e.g. Lavin 1989, p. 135 f).

tion. Sweden attaches particular importance to protecting the government from the courts.

Seen from outside, it appears obvious that the decisions of the Swedish government have also to be based on law and to keep within the limits laid down in law. This idea is also embodied in the constitutional rule that public power is exercised under the laws. It follows that respect for this principle has to be safeguarded through independent courts. It has nevertheless proved difficult for such ideas to have much impact on the Swedish debate.

Independent courts derive a significant part of their legitimacy from the obligation to base their decisions on legal rules adopted by politically accountable bodies. As far as possible the verdict of a court has to be based on the constitution and other laws.[9] A democratically-based defence of the scrutiny by the courts of parliamentary decisions must always be determined by the principle that its foundation is the norms of general application which are arrived at by others (Smith 1993, p. 446 f., Smith 1995b). The scrutiny by the courts of government decisions must be aimed at safeguarding legality, i.e. determining whether "the decision in the matter" conflicts with what the Law on Judicial Review (*rättsprövning*) describes as "a legal norm".

In a legal system based on civil law, such as that existing in Sweden and in the majority of other European countries, most of the rules and regulations the courts are charged with defending have been created by formal decisions of bodies which, directly or indirectly, are answerable to the people from whom public power proceeds. Naturally, a good number of legal norms have developed out of legal practice and in other ways not based on legislation, including the circumstance that all interpretation of law presupposes a creative element as well as efforts to fill in the gaps in the legislation as it exists. Here, however, the link to political accountability may be based on the fact that such rules and regulations only apply as long as they are not changed or rescinded by provisions of the constitution or in legislation.

[9] As a matter of form, it should be pointed out that this approach needs to be nuanced so as to include the creative element which always intervenes between a legal text and its application to the facts of a particular case.

As long as the courts keep within such limits as far as is possible, their scrutiny of the decisions arrived at by other public bodies can hardly be criticised as undemocratic. Such criticism would actually mean that the principle enshrined in the Instrument of Government that public power should be exercised under the laws was also considered to be undemocratic. There is no support for any such idea in the Instrument of Government. On the contrary, the law itself derives from public power which in its turn proceeds from the people. Considered in this light, there is no contradiction between the sovereignty of the people and adherence to the law. After the constitution, it is statutory law which is the supreme embodiment of the democratic *Rechtsstaat*. How, therefore, could it be undemocratic to seek to put it into effect?

One aspect of the principle of the exercise of public power under the laws is that the law must also be obeyed when it lays down that certain matters are to be decided solely by the government, or some other public body. Provisions of this kind are relatively common in the modern constitutional state. Legislation involves a good many decisions being made to some extent on discretionary grounds, when something is considered "reasonable", for example. In such cases it is the task of the courts, in most European countries, to ensure that the decisions lie within the limits imposed by the legal rules to which the authority in question is submitted. It is, however, the decision-making body itself which is free to make choices within what scope remains.

What are often referred to as the discretionary powers of the administration must be exercised in a manner that is accountable to political bodies; setting aside here issues concerning the professional accountability of civil servants. If the courts were also able to hear appeals regarding this aspect of government decision-making, their scrutiny would have to be based on something other than the legal rules to which the government must adhere. Ultimately the courts would need to make their own judgement as to the reasonableness and appropriateness of the decisions. But a judge is neither individually or professionally better able to determine such issues than a government minister, for example. On the contrary, it is the very independence of the judiciary which contributes to their being less fitted to make such discre-

tionary assessments of government decisions. Political assessments of reasonableness which the law assigns to the government are best decided under conditions of political accountability.

Against this background, the system of judicial review of the legality of government decisions would seem to be essential if the principle of the exercise of power in conformity with the law is to be taken seriously. This system should be extended to cover all matters concerning the legal limits for the exercise of the government's authority in relation to individuals to the extent that the law itself has not decided to extend the scope of judicial review. Defending the traditional system solely by reference to tradition itself is an inadequate defence in such a key area. Other sustainable defences are difficult to discern.

The guiding principle in Sweden relating to the scrutiny by the judiciary of administrative acts, i.e. the scrutiny of all aspects of the decisions, leaves a lot to be desired. The time has now come to consider the arrangements normally pertaining in Europe, where the courts only examine the legality of the decisions of public authorities and not their reasonableness. In this light, the system set out in the Law on Judicial Review relating to the legality of acts of the public administration (*rättsprövning*) would seem to be defensible, but not, however, the set-up peculiar to Sweden in which the administrative courts may review every aspect of the decision being appealed. This will form the subject of the next section.

The Courts and the Administration: Are the Administrative Courts Too Powerful?

The theme of the preceding discussion on the relationship between the courts and the government has been about the traditional position of the courts in the Swedish legal system being too weak. The new model of judicial review solely of the legality of administrative acts now gives cause to discuss whether the role played by the administrative courts has perhaps been too strong.

A consideration of general administrative law in Sweden from the horizon of other European countries reveals that the relevant legal manuals concentrate largely on matters to do with procedure.

The key question for legal experts in administrative law is what the administration should do to prepare and make decisions and which rules apply concerning appeals against these decisions (see e.g. Strömberg 1998).

This orientation is in stark contrast with the corresponding handbooks both in Sweden's western neighbours and in other European countries with legal traditions as different as those in England and France.[10] In these countries, the manuals on administrative law lay great store by issues concerning the allocation in material terms of the powers of the administration, i.e. which decisions can be made, what their contents may be and within the confines of which legal limitations the administration must operate.

All these countries honour the principle of an administration operating in conformity with the law, often referred to on the Continent as the principle of administrative legality. Once more there is cause to cite the Swedish Instrument of Government and its principle that public power is exercised under the laws. Why, then, is it the case that this principle has attracted so little attention in the general literature on administrative law in Sweden?

The obvious explanation is that the principle of legality plays little or no role in most of the existing procedures for making appeals against administrative decisions in Sweden. When the decisions are reviewed by superior administrative bodies, all aspects of these decisions may normally be taken into account. Both legal errors and disagreement as to what is reasonable and expedient may become the grounds for setting aside the original decision. The administrative appeal body is also able to replace the decision with a different one it judges to be better.

The same approach also holds when a decision is appealed to the administrative courts. Like the Supreme Administrative Court, the county administrative courts and the administrative courts of appeal have quite simply taken over the role of superior administrative bodies when hearing appeals from other parts of the administration. This tradition reached fruition as recently as

[10] Re Norway: Eckhoff & Smith, 1997 chapters 11—12, England: Wade & Forsyth 1994, parts III, IV and France: Vedel & Delvolvé 1990, 1, p. 442 f. and 2, p. 290 f.

1998, when the right to appeal to an administrative court instead of to a superior administrative authority was at long last introduced as the guiding principle.[11]

The Swedish administrative courts have thus acquired the same role, broadly speaking, in dealing with appeals as the superior administrative bodies and the government. This makes it less interesting to draw a boundary between issues concerning the legal limits of the powers and duties of the administration and those concerning the use of such powers to make assessments of reasonableness within the limits imposed by legislation and other legal rules. Apart from a few areas, namely judicial review of the legality of certain administrative acts (*rättsprövning*), local government appeals and the judicial imposition of a conditional fine, the courts are entitled to hear appeals against the entirety of the decision and, to a large extent, they appear to do so.

The guiding principle that the courts have the power to scrutinise both the legality and the reasonableness of administrative decisions is a major departure from the pattern in the rest of Europe. The normal state of affairs there is for those courts which are charged with scrutinising the public administration to make their judgements on the basis of legal rules which others have adopted. They are expected to quash decisions which "conflict with a legal norm" to quote the Swedish Law on Judicial Review (*rättsprövning*). Within the limits thus drawn up for the exercise of public power, it is the business of the government and the administration to decide when and in what way they wish to make use of the powers and duties the law accords them.

The mere fact that the Swedish system differs from that of other countries does not, in and of itself, constitute an objection. What is of far greater importance is that the predominant division of labour between the courts and the executive power in Europe is founded on key principles concerning the role of an independent judiciary in a democratic society.

The historically determined Swedish set-up in contrast goes a long way towards equating the administrative courts with other parts of the executive power. It is significant that until the 1974

[11] The Administrative Procedure Act § 22a, SFS 1998:386; prop. 1997/98:101.

reform of the Instrument of Government, the administrative courts were counted as administrative authorities rather than courts of law (Lavin 1972). This approach risks perverting the notion of a judiciary that is independent in relation to the government and the administration. When the courts are charged with performing approximately the same duties as those bodies they are to scrutinise, it may become difficult to defend a special independent status for the judiciary.

As has already been pointed out, the current Instrument of Government clearly reflects the Swedish tradition of equating the courts and the administrative authorities. There is much to suggest that this distinguishing feature constitutes a problem for the legitimacy of the courts in a democratic system and hence for the courts themselves. Paradoxically, the problem derives from the fact that the administrative courts in Sweden are too powerful when considered from a legal point of view.

The capacity of the administrative courts to operate in the role of the administration may not perhaps constitute as great a problem in relation to those authorities which themselves enjoy a high degree of autonomy in the exercise of their authority. The position of the autonomous administrative agencies and the courts is becoming rather similar in this respect. Within these areas, the courts are charged with reviewing decisions which were made by authorities which are in principle as independent in relation to politically accountable bodies as are the courts themselves.

It is on this very point that the arrangement inherited in Sweden provides some justification for maintaining that the system of independent courts which can operate in the role of the autonomous administrative agencies does not present major problems in terms of the general European principles regarding the division of labour between courts and administration. What this neglects, however, is the fact that the administrative authorities possess expertise and local knowledge which judges usually lack. Moreover, the argument presupposes that the administrative courts are cut off from those forms of management, particularly those of an informal nature, which are to be found operating in relation to the administrative agencies of the state.

However, the problem becomes a different one when the administrative courts are charged with supervising bodies which enjoy particular political legitimacy; as, for example, in the case of the government and the municipal councils. These particular bodies exercise their power by virtue of legislation which accords them a separate and distinct status in a system of democratic government. An important aspect of such legislation is the freedom to choose solutions within the legal limits which apply at any particular moment. This power is to be exercised under the conditions of political accountability such bodies are subject to. An independent judiciary is ill-fitted to carry out this task.

This way of seeing the relationship between the judiciary and the government makes it easier to understand why Sweden took so long before allowing the Supreme Administrative Court to hear appeals against government decisions. As we have seen, it is difficult to accept that there should be no opportunities to test whether the government has kept within the limits of the law. But the principles which underlie the division of labour between the courts and the administration in the majority of European countries make it no easier to accept that a court should scrutinise those aspects of government decisions which are of a discretionary nature. When the law provides a certain degree of freedom to choose between various outcomes, this is because freedom of choice should be exercised under the particular form of political accountability to which the government is subject.

It is reasonable to suppose that part of the opposition to court scrutiny of government decisions is based on considerations of this kind (one example is provided by Holmström 1998, p. 15). To the extent that the choice is between a system in which an independent judiciary can replace, at its own discretion, the outcome decided by the government and a system in which the government has the final word on matters of reasonableness, there are good reasons for choosing the latter alternative. What this would mean in effect is that a historically determined arrangement which makes the administrative courts considerably more powerful in legal terms than in other European countries may be seen to be an obstruction to their playing that full role normally accorded to an independent judiciary in a democratic and constitutional state.

When seen in this light, the introduction of the model of judicial review of the legality of acts of government (*lagprövningsrätt*) represents a step towards creating a better balance between the government and the judiciary. It is factually correct that the limitation of court scrutiny to the issue of whether the government is keeping within the confines imposed by law reduces the power of the administrative courts in relation to the principle that the courts are free to examine all aspects of the appealed decision. From a broader perspective, however, this step will probably strengthen their position.

The Administrative Courts and the Municipalities

The corresponding argument can be adduced in dealing with the scrutiny by the administrative courts of decisions made by the popularly elected assemblies in the local government sector, such as the municipal and county councils. Here, too, consideration must be paid to the particular circumstances underlying the exercise of power. It is appropriate that independent courts only intervene on issues which concern the interpretation and application of the legal regulations to which the administration must adhere. Freedom of choice within the limits of the law is best exercised by the administrative bodies themselves.

It is not unreasonable to suppose that what has been characterised as the "defiance of the courts" on the part of the municipalities (Warnling-Nerep 1995) should to some extent be understood against the background of the powers of the administrative courts to hear appeals against what the municipalities assess to be appropriate and reasonable. Their position would be different if, as in other European countries, the courts were obliged in principle to content themselves with testing whether discretionary judgements lie within the outer limits laid down in law.[12]

[12] Both in legal practice and public debate, the right to income support to achieve "a reasonable standard of living" within the terms of the Social Services Act (1980:620) prior to the changes to these terms made in 1997 (SFS 1997:13) has provided a key example of the lack of any clear demarcation between legality and reasonableness. Concerning the background and practice, see Esping 1994, p. 193 f.

Since public power is to be exercised under the law, it cannot be argued that the activities of the municipalities, for example, should be exercised without their compatibility with legislation being subject to scrutiny by independent courts. In terms of this particular relationship, the special political legitimacy of the municipal councils does not provide a contrary argument of any force.

This approach is in accord with the principle enshrined in the constitution that the rules governing the powers and responsibilities of the municipalities shall be laid down by law (IG 8:5). The European Charter on Local Self-Government, which Sweden has ratified, is also based on the principle of a right to self-determination at local level within the limits allowed by the legislation.

On the other hand, this makes it difficult to accept a central role for independent judges when faced with the task of deciding which of several legal alternatives is reasonable. Decisions of this kind should be delegated to the municipalities themselves.

The dilemma inherent in the Swedish system can only be resolved by separating legality from reasonableness. It is here that the Law on Judicial Review relating to the legality of acts of government, etc. may prove important as the starting-point for reform of a more general kind.

Such a change would initially involve a reduction of the powers of the administrative courts compared with the current situation. Change of this kind would, however, bring the Swedish legal system more closely in line with that principle of the democratic polity which involves public power being based on the law and having to be exercised within the limits laid down by law. Within these limits executive power, direct and indirect, should be exercised under conditions of political accountability.

In a system of this kind, no problem arises at the level of principle when an independent judiciary monitors the fulfilling of the requirement for adherence to the law and checks that the limits of the law are not being overstepped. As long as the courts keep to such issues, they can operate at full strength. Their role becomes significantly more precarious, however, when they are also required to judge the reasonableness of administrative decisions. Another author has observed that "through prejudicial rulings on vital aspects of matters in a number of fields, the administrative

courts have adopted a role in the implementation of policy that comes extremely close, or infringes on, the monopoly of popular government ... to determine the content of public power" (Esping 1994, p. 39).

The scepticism directed at "conservative judges" which is a periodic feature of the Swedish debate will also become less legitimate if the courts limit themselves to monitoring the extent to which the politically accountable bodies keep within the limits of legislation. Under otherwise similar circumstances, such scepticism gains in power the greater the opportunity there is for judges to create law on their own. A limitation of the powers and duties of the administrative courts to supervising only the conformity with the law of the operations of the municipalities would therefore, paradoxically, help to increase the legitimacy of the courts and thus also make them more powerful.

It is important here to remember that even today scrutiny of the legality of municipal decisions plays an important role. Under the terms of the Local Government Act, every resident of a municipality is entitled to appeal for judicial review of the legality of a decision, a process traditionally known as a local government appeal (*kommunalbesvär*), by asking an administrative court to rule on whether the municipality has acted *ultra vires*. The court may quash, but not change, the decision. The appellant need not himself be the party concerned in the case, which is otherwise a requirement if a case is to be heard in a court of law. Local government appeals are thus a form of *actio popularis*.

Local government appeals appear to play a less prominent role in practice than ordinary appeals (*förvaltningsbesvär*), where the court can rule on both the reasonableness and the legality of the administrative decision. In the case of such ordinary administrative appeals, the court is also empowered to alter the material content of the local government decision.

Local government appeals provide a positive adjunct to the rule of law in Sweden. This form of judicial review of the legality of local government decisions can contribute to the efforts to establish a powerful municipal "rule of law" and thus strengthen the legitimacy of local self-government. Judicial review of this kind can help increase respect for the law without opening the

way to extensive intervention by the courts in the freedom of action the municipalities enjoy *within* the limits of the law. In contrast with administrative appeals, which allow the courts to rule against the way the municipalities have made use of their freedom of action, judicial review of the legality of local government decisions does not involve any infringement of the principle of local self-determination. In the new system of judicial review of the legality of certain administrative decisions, Sweden comes closer to the current order in Europe than in the inherited system of court scrutiny of the reasonableness of administrative decisions.

On the other hand the principle of *actio popularis*, the rule that every "member" of a municipality is entitled to make a local government appeal, goes considerably further than is the case in many other countries. It is important to be vigilant in safeguarding this combination of popular action and a means to scrutinise the legality of decision-making.

The Boundary between Legality and Discretionary Power

No absolutely clear-cut division exists between legality and discretionary power. On the contrary, both practice and theory in most European countries testify to how complicated drawing such a boundary can be (Eckhoff & Smith 1997, chapter 12). This boundary is often developed over time, in tandem with changes in legislative techniques and in the view taken of how the boundary *ought to* be drawn. This makes it no less important, however, that at any given moment a boundary *does* exist. Since the way the boundary is drawn depends on several key considerations of principle, which also apply in Sweden, it is also important to recall that such a boundary *ought to* exist.

Against this background, there is therefore reason to increase awareness that the responsibilities must be allocated in such a way as to make clear that the administrative courts and the entities they are to scrutinise are not suited to fulfilling the same requirements.

It would be a positive step along this road were the historically

determined constitutional umbilicus connecting "justice" and "administration" to be severed. However, until eventually amended the picture painted by the Instrument of Government on this point need not stand in the way of an increased awareness of the need for greater clarity in the division of responsibilities.

An awareness of this kind might stimulate efforts to draw this boundary between legality and reasonableness based on Swedish circumstances and requirements (Marcusson 1992). It would then be possible to start from the standard formulation used by the Supreme Administrative Court, in connection with the *travaux préparatoires* to the Law on Judicial Review relating to the legality of certain administrative acts, to determine what is meant by a decision "conflicting with a legal norm":

> In addition purely to the interpretation of legislation, judicial review also encompasses issues such as assessing the facts of a case and evaluating the evidence as well as issues concerning whether the decision conflicts with the requirement for objectivity, impartiality and the equality of all before the law. Judicial review also encompasses errors in procedure which may have affected the outcome of the matter. If the legal provisions are designed so as to allow the administration a certain freedom of action in the making of its decision, judicial review also encompasses the issue of whether the decision falls within the confines of this freedom of action (Lavin 1995, p. 150).

This formulation is closely related to the European standard pertaining in this area. If exploited to the full, it will give the courts extensive powers to review decisions by the government and the administrative authorities. Such powers are, however, not unlimited. The detailed nature of these powers is laid down in the form and content of legislation at any given point. It is the legislature that has the last word on future efforts to broaden or restrict the freedom of action of the government and the administration within the limits of the law.

Only in those cases where the law allows for no freedom of action is it possible for the courts to review all the aspects of a decision. In the modern administrative state this is not a dominant feature, however. Usually the law allows greater or lesser scope

for assessments of reasonableness. In which case the scrutiny by the courts, in a system on the model of the Law on the Judicial Review of Certain Administrative Decisions, will not be all-encompassing, nor should it be. When the decision falls within the legally defined freedom of action, it is the business of the government or of the corresponding administrative authority to decide how they wish to make use of this freedom. Unless the law indicates otherwise, such discretionary judgements are not subject to review by the courts.

Once again there is reason to draw the paradoxical conclusion that the courts should be weakened in one respect in order to gain strength in another. Currently their power to alter the decisions on reasonableness made by the administrative authorities contributes to weakening the position of the courts in the public mind. Restricting the focus of judicial review to the consideration of legality would strengthen their legitimacy in the democratic system of government.

The Courts and Parliament

The recognition of the right to judicial review of the constitutionality of acts of parliament in the current Instrument of Government (IG 11:14) represents a significant advance in the development of constitutional government in Sweden. This step was, however, taken with a great many reservations; the requirement that the error be "manifest" is only one example.[13] In legal practice, the opportunity to appeal against acts of parliament has failed to make much impact so far (Nergelius 1996).

During the last fifty years, comprehensive changes have taken place outside Sweden in the field of judicial review of legislation. Prior to the Second World War, almost all democratic countries started from the position that parliament-made law embodied the

[13] Another example is the assumption in the travaux préparatoires that the judicial review of constitutionality may only take place when it has been expressly invoked by one of the parties to the case or when there is otherwise "particular cause" to assume that a conflict between norms has arisen. Cf. Konstitutionsutskottet (the Parliamentary Standing Committee on the Constitution) 1978/79:39, quoted from Petrén & Ragenmalm 1980.

general will (la volonté générale). In the Nordic countries, too, this interpretation of the idea of popular sovereignty has enjoyed powerful historical support. The trend in other democratic countries has increasingly meant that today's Sweden stands out as an exception.

Nowadays one form or another of judicial scrutiny of legislation is part of the normal run of things in democratic countries. In addition, institutions such as the European Court of Justice and the European Court of Human Rights have come into existence. Seen from this perspective, the introduction of an explicit provision on judicial review in 1979 in the Instrument of Government would seem to be an extremely cautious advance. It is therefore hardly surprising that the debate during the most recent twenty years or so has moved on even in Sweden.

One of the key themes of the debate is whether it is justified to allow legislation to be set aside only when "the error is manifest". This rule is based on a search for the right balance between legislators and judges, a circumstance not unique to Sweden. As previously mentioned, the idea of giving the government the same privileges as parliament should be questioned. On the other hand, there may be good reasons to give the supreme body elected by the people a certain privileged status.

It is scarcely credible to maintain that the right of judicial review is illegitimate as part of a democratic society. Nor is it unreasonable to argue that the requirement for a "manifest" infringement of the constitution, or at least the implementation by the courts of this requirement, goes too far. However, to enter this debate in greater detail would lead us astray at this point (Smith 1993, part VIII, Holmström 1998, Bengtsson 1998).

Another theme in the debate is whether Sweden needs a specialised constitutional court (e.g. SOU 1993:40). A point often neglected here is that this is an issue of means rather than ends. A comparative perspective reveals that a system of judicial review can be set up in many different ways (Smith 1991). The choice of model should be postponed until the fundamental question of the nature of the desired aim has been answered.

Should a Swedish constitutional court work within the parameters which currently follow from IG 11:14? As long as Sweden

holds fast to the requirement that the conflict of acts of parliament with constitutional law be manifest, no constitutional court is likely to arrive at different conclusions than those currently being drawn. On the other hand the judges in the European constitutional courts of today are recruited with particular reference to their constitutional tasks, while members of the supreme courts of general jurisdiction usually have a more technical legal background (Favoreu 1996). A constitutional court would therefore be more legitimate if the judicial review of legislation were given a greater purview than in the current Instrument of Government.

The main issue is thus what the impact of constitutional law should be in relation to ordinary legislation. Should courts be able to invoke the constitution at all? The most important cleavage runs between countries in which the constitution is counted as a law which can be used in the practice of the courts and those in which the constitution is counted more as a kind of administrative statute which cannot be invoked by any court (Smith 1997). It is no historical accident that the Swedish constitution is called "the Instrument of Government" and not "the constitution". The fundamental view held in Sweden still seems to be that parliamentary legislation should carry the day, even when its relation to the constitutional freedom of action of parliament has been questioned.

Which brings us back to the issue of majority rule and its boundaries. This issue has seldom given any great cause for concern in Sweden. Ultimately, it is the differences in the procedures for altering them that create a meaningful distinction between constitutional law and ordinary legislation. In a number of countries, such as the US and Denmark, this procedure is so demanding that it is almost impossible in practical terms to bring about a change in the constitution. In France and Norway, for example, as in most countries, the procedure is more elaborate than that which applies to the alteration of an ordinary law, but far from being so demanding as to make it impossible in practical terms to alter the text of the constitutional statutes.

In Sweden, parliament has to pass two identically worded resolutions by a simple majority in separate sessions, with a general election held in between. The result in practice is that the constitution may be changed as soon as a political majority is to hand.

This means that the degree of constitutional protection for rights and freedoms is weaker in Sweden than in many other countries. However, it also means that the potential for conflict between the ruling majority and the judiciary is considerably less pronounced than in countries where the constitution can only be altered by a qualified majority or something similar. Were the courts to arrive at answers to constitutional questions that political Sweden is not prepared to accept, the interpretation of the constitutional limits to the freedom of action of the legislature on which the rulings are based would only be valid as long as the constitution remained unchanged. In this respect the last word lies not with the judiciary but with the political power.

The central, but often neglected, message may be found in a proposition by one of the doyens of French public law: "the legitimacy of the constitutional court lies in the fact that it does not have the last word" (Vedel 1994). Obviously this does not apply to individual cases, where elementary requirements of the rule of law stipulate that it is the judge who has the last word. However, it does apply to the far more important question as to which constitutional norms shall apply in the future. In Sweden the formal road to constitutional change is less demanding than in many other countries. Judicial review of legislation therefore constitutes a comparatively minor threat to the freedom of action of the political majority.

If this threat is already considered to be too great, this can only mean that the constitution is being taken no more seriously than the political majority is willing to accept. If this is the case, the question must be whether Sweden is ripe for a special constitutional court.

The major opportunities afforded in Sweden for correcting the interpretation of the courts by constitutional change may be compared with the limited power she has over the international agreements which bind her. Treaties and conventions may only be altered if all the contracting parties are in agreement. The requirement for unanimity is considerably more demanding than the requirements which pertain to making constitutional changes in Sweden.

Judicial review of legislation by national courts is, in this respect, much more readily acceptable as part of a democratic pol-

ity than the attribution of comprehensive powers and responsibilities to international courts to which nation states are subordinate (Smith 1996). Controversial rulings by the courts in Luxembourg and Strasbourg may only be corrected if all the participating countries are in agreement as to which changes to the body of the treaty are necessary.

It is a paradox that political Sweden seems to find it easier to tolerate competition from international courts than from the Supreme Court and the Supreme Administrative Court, sitting in Stockholm.

Are Autonomous Administrative Agencies Democratically Acceptable?

One of the distinguishing features of the Swedish constitution is its equation of the judiciary with the administrative authorities. The discussion hitherto has primarily been concerned with the weak position of the judiciary.

It is also possible to draw a different conclusion. Swedish administrative agencies enjoy a relatively high degree of legal autonomy, particularly when considered in the light of the normal model for organising the relationship between the government and the administrative apparatus. Under the Continental model, the administrative apparatus of the state is arranged hierarchically under a politically and constitutionally accountable minister. In contrast with the Swedish set-up with its autonomous administrative agencies, it is common practice to refer here to ministerial rule.

The peculiarities of the Swedish system are clearly embodied in the constitutional provisions to the effect that no authority, including parliament and the decision-making bodies within the municipalities (also known as communes) may determine "how a public authority shall make its decision in a particular case concerning the exercise of authority against a private subject or against a commune, or concerning the application of the law" (IG 11:7). This rule is in stark contrast to the European model of ministerial rule.

The Swedish system is based on a distinction between decision-

making in a general form, through legislation for example, and in individual cases. In this context it may be worth recalling that another article lays down in similar fashion that no public authority may determine how a court shall adjudicate "a particular case" (IG 11:2). This rule means that political influence must be exercised through general norms.

The provisions of the Instrument of Government presuppose a link between power and accountability. This helps to clarify how power is to be distributed. The design of the Instrument of Government on this point is advantageous, compared with systems in which the politically accountable minister is legally entitled to regulate operations down to the smallest detail while also shouldering the entire responsibility. A wide gulf frequently exists in practice between the facade of political power adopted by ministerial rule and the actual powerlessness of individual ministers when faced with the vast quantities of decisions to be made.

This is not to say that the autonomy of the Swedish administrative authorities is absolute. Article 11:6 of the Instrument of Government sets out the guiding principle that administrative authorities of the state are subordinate to the government. Politically accountable bodies may also change the regulations governing the administrative authorities and their operations. If parliament and the government consider that these are unsatisfactory in practice, the regulations may be made more precise, altered or quite simply abolished. This is the way it should be in a society structured around the principle of popular sovereignty as the foundation of public power.

It is here that the argument for the democratic nature of the judicial review of legislation coincides with a recommendation in favour of the Swedish distinction between government and administration. Sweden is able to make a useful contribution in this regard to the general debate on the nature of political governance and its limitations in particular cases. This debate is also brought into focus by issues concerning the autonomy of the Bank of Sweden, local self-government and the growing number of autonomous administrative authorities (such as administrative "tribunals") in a number of countries with ministerial rule.

There are several advantages to the Swedish model of setting

limitations to political management in individual cases. One is that it helps to make clear, at least in principle, both before and after changes to the legal regulations which govern operations, who is responsible for the parameters within which the decision is made (Smith 1994b). Another advantage is that this increases the authority of statutes and other legal norms of general application as means of democratic governance. When considered in this way, the Swedish model presents considerable advantages on this point compared with the standard form of ministerial rule in Europe.

At the same time the current emphasis on management-thinking and political control means that informal management methods are becoming more prevalent. As a result, the link between power and accountability risks becoming less clear than is envisaged as part of the Swedish model. What the Swedish debate reveals is the lack of a certain awareness about the contents of the Swedish model in practical terms. It is, for example, unclear what the relation is between the principle that the administrative authorities are subordinate to the government (IG 11:6) and the provision (IG 11:7) concerning the autonomy of the administrative authorities in individual cases (Wennergren 1998).

The ideal of a link between power and responsibility may only be realised through a well-developed understanding of the significance of the form of political decision-making, as, for example, in legislation and government decisions. It is not enough for political "signals" to have a satisfactory content, if they are clothed in a form which does not make clear who bears the responsibility for the outcome.

It is for this reason that the advantages and disadvantages of the Swedish model for the dividing-line between government and administration call for renewed discussion (SOU 1993:16). The need for a debate of this kind has increased as a consequence of Sweden, through its participation in the EU, coming into close contact with a large number of states under ministerial rule, although on this occasion it is by no means certain that it is Sweden that should be attempting to fit in.

The starting-point for the debate should be that it may be defensible in democratic terms to exclude certain forms of political

influence. The courts and administrative authorities should be independent and their responsibilities clearly demarcated. This presents us with one of the dilemmas of democracy. Without a certain degree of autonomy, various bodies are unable to put principles, such as local self-government, judicial review of legislation and the link between power and responsibility, into action. There exists at the same time a scepticism about having public bodies that are actually self-governing in relation to bodies with greater democratic legitimacy.

A first route out of this dilemma is provided by the condition that independence is never total. Operations may always be subordinate to political decisions of a general kind and in a legally binding form that may be documented. In the Swedish model it is only the management of individual cases that is excluded.

This route leads on to another. The discussion must start from the fundamental constitutional principle that parliament-made law, after the constitution itself, is the highest embodiment of democracy. Additionally, both the constitution and ordinary laws may be altered in a manner laid down in advance. If an independent authority starts using its power in a way that has not been intended, this trend may be corrected by amending the general norms. Moreover, other opportunities also exist such as increasing or diminishing the financial resources and changing or depleting administrative structures.

It is difficult from this perspective to make credible the idea that the exercise of public power within the legally defined framework is undemocratic. It is true that the formal possibilities for political intervention in particular cases are constrained, at least as long as the rules remain unchanged. But political governance on the small scale is of no greater value than political governance in the large. In every case, the potential benefits for political bodies of being able to intervene in particular cases have to be weighed against the advantages to be achieved by restricting this opportunity.

The Swedish model with its autonomous administrative authorities offers significant advantages. It provides better opportunities to realise the principle of a clear link between power and responsibility. Properly applied it can lend a greater impact to political choices.

4 A European Public Sphere in Sweden?

Since the free formation of opinion is one of the cornerstones of democracy, a forum has to exist in which dialogue and the exchange of experience can take place. What is required for a working public sphere are objective knowledge, reciprocal dialogue between the citizens and their elected representatives and continuous debate which is not taken over by the subjects in fashion at any given moment.

Responsibility for getting the public sphere to work along these lines lies not only with the mass media and journalists but also with the representatives of political institutions, interest organisations, and ultimately with the citizens themselves. These social actors are not only entitled to participate in public debate, they are also obliged to do so. At the same time, resources and structural determinants are unequally distributed. Access to expert knowledge is dependent on a number of factors which include proximity to the political decision-making process, education and the technical skills to make use of the opportunities provided by the information society. The capacity to participate on a continual basis in the public sphere is greater on the part of professional politicians than in the case of the layman. Politicians also run the risk of establishing closed political spheres by an alienating use of language that is difficult to understand by outsiders. This makes great demands on the culture of debate within a society which must simultaneously satisfy the three fundamental requirements of the public sphere: dialogue, continuity and informed opinion.

External observers long considered the culture of debate within Swedish politics to be an ideal model. Sweden was known for the thoroughness with which information even on complex ques-

tions was acquired and mediated. The outside world was impressed by the deeply rooted tradition of popular adult education and the broad range of study circles that were on offer. Sweden's capacity to create and maintain a conciliatory climate of debate even on issues which powerfully engaged the thoughts and feelings of the citizens led to astonishment and admiration. Objectivity, consensus and a willingness to compromise developed into almost a myth seen as underpinning the ideal model of Swedish democracy.

Swedish democracy has previously passed several acid tests successfully. After the issues on pensions and nuclear power the problems surrounding the European Union developed into yet another testing conflict in Swedish contemporary history. All three matters resulted in popular referenda: the pensions conflict in 1957, the nuclear power issue in 1980 and membership of the EU in 1994.

The vote on the EU failed to bring the issue to a close. Long after the referendum and EU-accession, the EU-issue still cuts a swathe across the political parties, splits the electorate into opponents and supporters and divides Sweden into EU-friendly and EU-hostile regions. This persistent pattern of conflict makes recognising the Swedish democratic virtues difficult. Do we have cause to exchange the traditional image of Swedish democracy for an assessment that is better adapted to the current realities? Does Sweden lack the capacity to create a working public sphere for discussion of the European issue? Critics usually chide the EU for its democratic deficit. Does Sweden suffer from a democratic deficit of its own when dealing with the issue of EU-membership and other European issues?

In addition to the democratic norm of creating a public sphere on such a central issue as the EU, there are further reasons to emphasise the necessity of Sweden initiating an open and wide-ranging debate concerning the EU. As a member of the Union, Sweden enjoys not only rights but also obligations. These include the duty of the government to inform the people about the EU and to provide the stimulus for an ongoing and objective debate. The government and parliament have particularly pressing reasons to fulfil their obligations to provide information precisely because membership of the EU was only advocated by a bare majority

and because the turnout for elections to the European Parliament in 1995 was so low.

Yet another reason why Sweden should conduct a wide-ranging and open discussion on EU-issues is entailed in the process of exchange in relation to the EU and the other member states. As a member state, Sweden not only receives resources such as subsidies, information on EU-issues and the evidentiary basis for decision-making, but also contributes significant resources to the EU, not only in economic but also in human and intellectual terms. This process of exchanging resources, knowledge and the allocation of authority (Lepsius 1991) makes particular demands on public access and debate. A European public sphere needs to create space for the views of Swedish citizens, organisations, interest groups and social movements. This would allow Sweden to set the standard. The European Union is in dire need of both stimulus and new ideas from countries with a deeply rooted democratic culture of debate.

A Public Sphere for European Debate

Research on the EU within the social sciences has hitherto focused primarily on the Union's democratic deficit, the lack of influence on the part of voters, the weakness of the European Parliament's powers of scrutiny over the Commission and the supra-governmental nature of the Union (e.g. SOU 1998:124). The criticism in democratic terms is aimed primarily at the EU and its institutions; the EU is accused of insufficient democracy (e.g. Elvander 1998). This chapter turns this perspective around and asks how Sweden is managing its new role in relation to its citizens. Is Sweden, in her capacity as a member country, contributing to the EU's democratic deficit?

A vital requirement for public support for the EU-project is access to knowledge, experience and debate. The question is whether such a European public sphere exists in the individual EU-countries. Jürgen Gerhards (1993) has studied this issue of whether a European public sphere (*europäische Öffentlichkeit*) exists in the German Federal Republic. According to Gerhards, in a Euro-

pean public sphere European issues should not be discussed solely from the restricted perspective of national self-interest but primarily on the basis of common European interests. It is not simply a question of *whether* European issues are debated, but also *how* they are discussed. Gerhards shows that a debate of this kind is conspicuous by its absence in Germany. Despite Germany's membership over many years, European policy in the Federal Republic is overwhelmingly conducted at the elite level and behind closed doors.

Why are EU-issues given so little space in the public debate? Gerhards cites various factors. Some of them are to do with the ingrained manner in which the news is reported and the professional habits of journalists. The multiplicity of European languages and technical barriers make transnational news-reporting difficult. A good many EU-issues are neither dramatic nor value-critical and are therefore hard to fit into the standard framework of day-to-day journalism. The reporting of EU-decisions at the national level is far from satisfactory. Gerhards' conclusion is that a deficit in the European public sphere at the national level contributes to the democratic deficit at the EU-level. Without the existence of a working European public sphere in the individual member countries, a Europe built around the values of citizenship and participation cannot come into being.

The German example gives rise to a more general question. In what way do the dominant basic political values in a member country influence the evolution of a more general political culture of debate on the EU? Which fundamental values influence or obstruct an open culture of debate around European questions in Sweden? Which values are associated with the EU-problem in Sweden?

Other factors than purely political values also contribute to creating a European public sphere in a member country. A key condition is the readiness of the national political actors to take up EU-issues in open debate. Focusing publicly on European issues has to be "worth it" for parties, social movements, interest groups, organisations, government and opposition, not simply on the basis of their value-based political convictions but also from the standpoint of calculated rationality. Involvement with the EU

should be expected to lead to a growing number of voters, supporters and sympathisers or at least to gaining the public's attention. Not taking part in this kind of debate should, in contrast, lead to diminishing voter numbers, fewer supporters and sympathisers and loss of attention.

EU-membership has created new types of actors and institutions whose task is to function as mediators between the EU and the single member country. In addition, each country has to regulate relations between the new domestic European institutions, the national political institutions and the general public. Important actors of this kind in Sweden are her European commissioner and the country's Members of the European Parliament (MEPs) or Euro-deputies. The popularly elected MEPs have a particularly significant role in shaping a European public sphere in Sweden. They constitute the only direct link between the European Parliament and Swedish voters.

The possibility of creating a public debate around EU-issues in Sweden is also determined by the institutional procedures that have been created to promote EU-issues and highlight them to the general public. The national political parties are the official channel through which the Euro-deputies mediate their views. Apart from these, there exist no formalised opportunities and no special forum through which they are able, or obliged, to provide an account of their activities in the European Parliament. The evolution of a new political actor, the MEP, has not given rise to any alteration to the Riksdag Act aimed at setting up mediating channels between the European and Swedish parliaments. This also reflects the subordinate role of the European Parliament at the national level. Sweden is scarcely different from the other member countries in this regard.

Another institutional channel between the EU, the Swedish government and parliament is the EU-Committee of the Riksdag (*EU-nämnden*). Its establishment reflects the powerful position of the Council of Ministers within the EU. According to the Riksdag Act, the government is obliged to keep the EU-Committee informed concerning all matters which are to be dealt with by the Council of Ministers. The EU-Committee is a consultative body made up of members of all the parliamentary parties.

The EU as a Conflict of Values: The Legacy of the Referendum

In contrast with the member countries on the Continent, which are characterised by relatively homogeneous core values concerning the process of European integration, a profound conflict of values sets Sweden apart on the issue of the EU. Fundamental criteria such as non-alignment, neutrality, democracy, national self-determination and prosperity are all associated with the issue of membership of the EU. Opponents and supporters adopt radically opposed views on the possibility of turning these aspirations into reality through the EU. In contrast with objective conflicts, conflicts of value may be distinguished in general terms by the fact that they give rise to polarised conflict groups which are profoundly emotionally involved with their points of view. Value conflicts promote the evolution of a polarised structure of debate. For the most part such a climate of debate makes for lively discussion and a broad range of participants. Membership in the EU should therefore have led to the creation of a major, dynamic and polarised public sphere in Sweden that would live on after the referendum.

However, if developments are traced up until 1999, one is forced to acknowledge that such is not the case. Contradictory trends have arisen. On the one hand, the open and lively debate over the EU-issue, which held sway until the referendum in 1994, became blocked with the result that the EU was turned into a non-issue during the electoral campaign of 1998. On the other hand, during the long period of silence the EU-issue retained its character of an emotionally draining conflict of values.

Even though the yes-side were victorious, the majority was so tiny that the victory was not interpreted as bringing the conflict to a proper conclusion. Formally resolving a conflict of values without at the same time being able to bring it to a conclusion creates a barrier to an ongoing discussion of the matter in public debate. An example of the polarised debate structure existing after the referendum was to be seen in the way the victorious yes-campaign was considered to be identical with those in power and all the resources at their disposal whereas the no-side, the under-

dogs, was identified with the general population and its lack of resources (see Hadenius 1996, p. 246 f.; Premfors & Rothstein 1999). The clash of values was also perpetuated as a split between those in favour and those against within the political parties, the Social Democrats in particular, as a confrontation between a pro-EU South of Sweden and an EU-hostile North, as an opposition between town and country and one between women and men. The high turnout was transformed after the result of the referendum into an ongoing source of emotional energy aimed at maintaining the polarised structure of EU-issues.

A conflict that is resolved but not concluded gives rise to hopes on the part of the losers that the battle is not entirely lost. It creates an ambivalent attitude to EU-membership. Sweden has therefore come to be seen as the reluctant European, the unwilling member. As a resolved but not concluded conflict, the EU has continued to influence the political parties. Whereas parties with a clearly defined EU-friendly or EU-hostile attitude have benefited from the legacy of the referendum, parties with internal divisions have been seriously disadvantaged by its after-effects. This is most especially true of the Social Democrats who were unable to ignore the risks that the EU-issue would lead to further divisions within the party.

Since the conflict on the EU-issue has not concluded, the referendum on EU-membership also had consequences in the years that followed. The election to the European Parliament barely six months after the referendum turned into a repeat performance of the referendum, except for the difference that the turnout was only 41.6 per cent.

What was unusual from a European perspective was that, despite its recent accession to the EU, Sweden retained the polarisation the referendum had created around the EU-issue in that three parties, the Social Democrats, the Christian Democrats and the Centre, campaigned with different electoral lists, a yes-list and a no-list. As a result, the 1995 election appeared to many voters to be even more complicated and alien. The governing party chose to prioritise national viewpoints over its obligation as the representative of a member country to put forward common European interests. The European public sphere not only shrank

in consequence but also took on a distinct national and partisan colouring.

Party-political strategic considerations also left their mark on the decision on the EMU taken by the Swedish parliament in 1997. The decision to remain outside the EMU for the time being helped to shut down the European public sphere until the general elections of 1998. By adopting a wait-and-see position, the government was able to put this polarised clash of values on ice and avoid internal party dissension.

The conflict over the EU-issue was therefore shelved for three whole years. Remaining outside the EMU had the effect intended by the Social Democrat government of putting the EU-issue in the deep-freeze for the whole of the electoral campaign of 1998. The opportunity of using the parliamentary elections as an opening through which to achieve a resolution of the value-conflict over EU-membership was not exploited.

Sweden missed its chance as a new member country to conduct an active EU-policy at the national level and so keep open the door to the European public sphere. Since the EU-issue was excluded from the electoral campaign of 1998, Sweden further increased its democratic deficit.

A clear link exists between the closing-off of the debate and the legacy of the referendum. Since referenda tend to create conflicts of value and polarised structures of debate, the risk exists that any referendum on the EMU-issue will lead to a new blockage of European policy in Sweden. Lessons drawn from the long-term negative consequences on the democratic debate of the previous referendum argue in favour of allowing the Swedish people to decide the EMU-issue within the framework of general elections to the Riksdag. This would also force the political parties to take a greater measure of responsibility for the European debate.

EU-issues in the Swedish Debate

The EU-Committee was set up once it was realised that EU-membership was likely to reduce the influence of the Riksdag on the political decision-making process. Its establishment created a

forum for the exchange of information and debate. Cabinet members are obliged to consult with the directly elected representatives of the people prior to meetings of the Council of Ministers.

The EU-Committee meets every week. Although its sessions are not public, stenographic records are kept which are made public later. In its press statements, the EU-Committee announces which subjects it will be dealing with and which ministers and Cabinet members the Committee is consulting. This information constitutes a key element in the process of communication between an official institution for European issues and the Swedish public. This process can only succeed with the mass media intermediating between the EU-committee and the Swedish citizens. At the end of each session, there is an opportunity for journalists to put questions to the members of the Committee. As a result the means employed by both EU-Committee and media to present and relay those issues dealt with by the Committee are of great importance for the European public sphere in Sweden.

The matters dealt with by the EU-Committee scarcely meet the requirement to discuss the EU-problem from a broader perspective. On the contrary, its dealings usually concern matters of detail which will form part of the evidentiary basis for the position to be adopted by the Swedish representatives at meetings of the Council of Ministers. Some of these issues, such as employment, antibiotics in animal feed, health and travel insurance abroad, concern matters of key interest; other matters may be of more marginal significance.

It is not simply the content of the matters dealt with that makes them so relatively inaccessible to a general reader, rather the incomprehensible mixture of technical jargon and officialese. "Agromonetary decisions", "Agenda 2000", "strategic reserves", "the convergence programme", "public service tasking" are just a few examples of terms that require elucidation in order for a layman to understand their contents. Additionally, it is frequently the decision-making process itself which makes the issues difficult to penetrate by an uninitiated Swedish reader. Remote and abstract decision-making processes help to create two separate worlds which condition the way members of the public conceive of the relation between the EU and their own nation. The mental

maps of Swedes are constructed in terms of "Us up here in the North" and "Them down there on the Continent".

It is an astonishingly rare occurrence when the EU-Committee call Swedish ministers to account after the meetings of the Council of Ministers. Hitherto its members have rarely put government representatives under pressure with questions about how decisions have been arrived at and who voted for what and why. By improving the report-back process from the meetings of the Council of Ministers, the European decision-making process would be made more visible to the general public. Individual ministers should be liable to be called to account if decisions in the Council differ from the position adopted by the EU-Committee.

The mass media are a vital link between the EU-Committee and the Swedish public. The question, for example, is how Swedish journalists monitor the matters dealt with by the EU-Committee and how they present the EU in general terms. Objective and continuous monitoring of European policy by the Swedish media would help to counter-balance the one-sided, top—down flow of information and promote a dialogue on EU-issues.

We have carried out a small-scale content analysis of press coverage in order to answer these questions. *Dagens Nyheter* and *Svenska Dagbladet*, two of the major Swedish broadsheets, have been examined over the course of the autumn of 1998 (more exactly from 14 Oct. to 15 Dec. 1998). All the press releases of the EU-Committee over the same period have also been analysed.

The reader is given the impression that there are two different ways of reporting the EU. One form of reporting tends to be unobtrusive, objective and thorough, while the other is frequently ridiculing.

Criticising the EU and monitoring politicians are among the key responsibilities of the media. A negative presentation can be defended, to some extent, with reference to the responsibility of the media to focus on problems in the EU. And yet the negative aspects of the EU in the Swedish press are only too apparent. A possible sociological explanation for this picture of the EU may be found in the fact that Swedish journalists, who are used, unlike their colleagues on the Continent, to having complete insight into national political institutions and decision-making processes, feel

hindered from carrying out their professional responsibilities to the full given the relatively closed nature of EU-institutions. The capacity of the media to promote a public European sphere in Sweden depends in turn on the openness of EU-institutions to oversight and monitoring.

Furthermore, no continuous monitoring of the matters dealt with by the EU-Committee can be discerned during the period in question. What becomes clear is that the newspapers only monitor the matters dealt with by the EU-Committee in incomplete fashion. As a result, the press functions poorly as a link between the EU-Committee and the Swedish public. Shortcomings in EU-institutions, in the EU-Committee of the Riksdag and in the media's reporting tend therefore to fuel one another. The result is that the European public sphere works less well than it should.

Members of the European Parliament in the Public Debate

The question is whether the institutions of representative democracy are capable of compensating for these deficiencies in the public debate on Europe. How have Swedish Euro-deputies tried to mediate between the European Parliament and their Swedish voters? What efforts have they made at the domestic level to get a debate going about what they actually do "down there" in Europe? Even before Sweden became a member of the EU, attention was already being focused on the poor level of popular support for the European Parliament. "Inadequate contacts with the everyday lives of European voters is the major institutional and human problem of the European Parliament" (Andersson & Lindahl 1994, p. 187). The question is whether there is still cause today to agree with the assessment of the above authors. In order to answer these questions we carried out an interview survey among a sample of the Swedish Euro-deputies who were elected in 1995.[1]

[1] A total of ten MEPs were interviewed: two Social Democrats, two from the Left Party, two Conservatives, two Greens, one Liberal and one from the Centre Party. In addition a Social Democrat member of the Swedish parliament was also interviewed. The interviews were carried out by Anna Wahlgren, SNS.

We asked the MEPs how they communicate with Swedish voters, where they meet them, what they inform them about and which other groups they are in contact with. In contrast with the assessment by Andersson and Lindahl quoted above, it turns out that Swedish MEPs do at least try to keep in touch with the voters. Most write articles regularly for the Swedish press, one or two write for the European press as well and for the publications of their own political parties. They travel, lecture, appear in television debates and take part in radio programs. In addition to voters and party members, they try to reach different groups such as school pupils, students, women, employers, local government politicians and trade union clubs. They take part in seminars and classrooms, appear at party congresses and go to meetings of local associations. They have, however, no access to any formally established national arena in which they are obliged to account for their activities in the European Parliament.

Modern information technology has become a vital adjunct for several MEPs. They all currently have email and more or less extensive home pages. Direct contact with the voters provides Euro-deputies with an opportunity to accentuate their personal profiles, cultivate their own style of dialogue and put forward their personal viewpoints. Technical assistance allows them to break free as individuals from the ingrained communication patterns of their party and create new relationships with the voters. One Social Democrat MEP considers that "full-time politicians" in particular need home pages "in order to do their own PR". Not everyone, however, is equally enthusiastic about this means of communicating. An MEP from Northern Sweden emphasises instead the importance of meeting people in person.

The Euro-deputies state that they try to highlight a long list of issues to bring into the public sphere. Work in the standing committees of the European Parliament helps to turn the MEPs into specialists in certain areas such as labour markets and employment and women's issues. Writing reports on particular issues allows Euro-deputies to reach out beyond their national borders and create new public spheres in Europe. An MEP from the Left Party related that her "Reporting Initiative" on "Violence against Women" was known beyond the boundaries of the EU.

Despite her opposition to the EU, she admitted that the European Parliament had served as a useful platform and made it easier for her to make contacts with the European women's movement and to influence the public debate on equal opportunity issues.

The MEPs also mention that they get the chance to inform people about the work of the EU in the course of the numerous visits different Swedish groups make to Brussels and Strasbourg.

The conclusion is that the activities the Swedish Euro-deputies are developing in order to reach their voters and other groups are very extensive, as are the range of questions they deal with and the multiplicity of forms of communication they use. There can be no doubt that, irrespective of their attitude to the EU and their party political stance, they take the obligations of office completely seriously and try to get their message across to their voters.

How do they see the importance of their office and their capacity to influence public debate? It is scarcely surprising that the EU-friendly MEPs assess their job as being significant and their capacity to influence debate as considerable. Some of them actually seem surprised at the real extent of the power they wield as MEPs. Even the EU-critics see their role as significant, as is illustrated by a representative of the Greens:

> Parliament basically has a view on every EU-issue. They stick their noses into everything. It has to be said that it is only in a minority of cases that parliament has a share in making the decision. But parliament makes its voice heard on every matter that is decided within the EU, and also on a lot of matters that never get decided. As an MEP one has, if not legislative power, then an opinion-forming power at least.

A second EU-critic from the Greens who recounted his progress in creating debate in various areas, such as narcotics, prostitution and environmental matters, considers that the EU is a "marvellous channel" for disseminating information.

Swedish EU-critics experience the contradictory role they play in the European Parliament as particularly oppressive. This becomes apparent, for example, when they assert that one has "to

be active on a very large number of fronts at one and the same time", that one has to be "tough" or even "hard as nails".

The question is what other difficulties exist, according to the Euro-deputies, when it comes to keeping in touch with the voters. The most important impediment is said to be limited physical capacity and the lack of time. Several MEPs point out that it is difficult to operate in Brussels, on the one hand, and to keep in touch with the voters at home, on the other. The fact that the entire length and breadth of Sweden has to be covered by only 22 Euro-deputies is seen as a problem. One of the Social Democrat MEPs explains:

> Political dialogue, which must always be conducted between representatives and those who elected them, is problematic for MEPs. Quite simply because there are only 7 of us Social Democrats to cover the whole of Sweden. It is obviously impossible for us to keep in touch with the voters to the same extent as our 130 members of the national parliament are able to do. It is more difficult in purely physical terms.

His view is supported by a Conservative MEP who says:

> It is difficult for 22 MEPs to cover the whole of Sweden. This makes it easy for us to be seen more or less as UFOs who get paid too much. It is incredibly difficult to be a national politician and have to be out of the country so much, while having to deal with issues that are not exactly the kind of thing that gets discussed at the kitchen table.

The larger the party group, the greater the capacity to divide the workload up within it and thus make things easier for the Euro-deputies. In the smaller party groups, MEPs are keen to put on record their feelings of inadequacy, as illustrated by this self-critical, ironic commentary:

> The job is inhuman. I think it is incredibly asocial since it involves so much travelling. Both in Europe and within Sweden. And then you always have to be available, at weekends and in

> the evenings. Many people, even some of my friends, believe that we MEPs live in Brussels. But we have not actually been exported, we have just been leased out.

The lack of time and the restrictive schedule of parliament are additional factors that the majority of Euro-deputies experience as a barrier to exercising their function as mediators between the European Parliament and Sweden. "We get time off for four weeks in the summer, a week or two around Christmas, and a week or two at Easter. That isn't much vacation time for anyone who is keen to keep up to date with what is going on in the constituency", a Conservative MEP explains. The following explanation provided by the Liberal MEP may serve to represent many other complaints:

> I really wish we had the chance to be at home for longer periods at a time. The parliament meets in session each week for almost the entire year. This does not allow for any satisfactory opportunities to participate in the work of the national parliamentary faction, to follow EU-work in the national parliament, to travel on a more continuous basis around Sweden and talk to people. The way work is structured in the European Parliament makes being in touch with the people we represent more difficult. I think it would be a good idea if there were a number of session-free weeks, at least four per year. I know that that is difficult, because there is so much that has to be dealt with. But if one were able to concentrate the work done in parliament that would be useful.

According to a Green Euro-deputy, too, making some weeks "Brussels-free" would allow MEPs to "plan their time in a different way. What's more the great Swedish public and party political Sweden would know that we were at home those weeks. We should be working on the home front at least every sixth, every eighth week, in order to report back."

The Euro-deputies consider that it is not only the restrictive schedule of the European Parliament but also the sluggish pace of adaptation by the Swedish parliament to European integration that helps ensure that contacts between both levels suffer.

Some of the MEPs go on to complain that they have not been provided with the opportunity to participate on a formal basis in parliamentary debates in Sweden. Moreover a Social Democrat MEP points out

> ... there is a risk entailed in MEPs being out of touch with the national parliament. I do not mean that the MEPs should toe the line of the Riksdag in any way, but we should have a dialogue with national politicians. We are in contact to some extent, but it needs to be a great deal better.

There are only a few Euro-deputies who want to be given greater resources in order to improve their working situation. The remainder when asked are strikingly satisfied both with their financial and personal resources. The majority consider that they have good contacts with for example party organisations, their colleagues in the Riksdag and the members of the executive committees of their parties in Sweden.

To sum up, the efforts of the Swedish Euro-deputies to serve as a connecting link between the European Parliament in Brussels and Sweden may be said to suffer a natural limitation primarily in terms of their physical capacity to work in two places and while fitting in to a restrictive schedule.

What are the lessons to be drawn from the work of the Euro-deputies between 1995 and 1999? In order to serve as emissaries between Sweden and Europe, the changes proposed by the parliamentarians themselves should be treated more seriously both in Brussels and in Stockholm. There are also good reasons to reconsider a greater degree of formalisation of the liaison procedures with the Riksdag. The new generation of Euro-deputies 1999—2004 may draw lessons from the experiences of the first years. The working situation of the MEPs gives cause to discuss a serious problem. There is a risk of Euro-deputies developing two types of political behaviour which are mutually incompatible. A Green MEP expressed these fears:

> Several parties are starting to develop one set of policies in Brussels and another in Stockholm, and the two are not in ac-

> cord ... This may sound a bit harsh but in my view many politicians change allegiance when they get to the European Parliament. They are primarily loyal to their own party faction, and secondarily to their own national party. If you look at the way people vote it is obvious that they do not have the same policy down here in Brussels that they have at home. You vote the way the Socialists do in Brussels and not the way the Social Democrats think in Stockholm. You vote as part of the EPP-group in Brussels and not the way the Conservatives think in Sweden.

The less Euro-deputies are obliged to provide an accounting before the Swedish parliamentary institutions in a formal setting, the greater the risk becomes that the European level will start to separate off from the Swedish level. One Green MEP considers that

> ... the weak point in the whole system is just that, the contacts between us who work down there and the ones doing the work up here. We get different information, but are supposed to have the same views in order to keep to the same line. It is difficult making this work, and I think that applies to all the parties. It is true that technology can solve quite a lot of all this. But you can't get away from the fact that meetings with individuals work best. Just going into a room and talking. Previously we used to make sure that one of the MEPs took part in the meetings of the national parliamentary group. That's fine in theory, but we have to travel so much in any case that it gets difficult to get to Stockholm as well.

The problem is that "there are deficiencies in the overall contact between the European Parliament and the national parliament. There is no obvious forum for cooperation. On the other hand cooperation does take place between the national parliaments. But what I miss is the interplay between elected representatives in the national parliament and the members elected by the people to the European Parliament", says one of the Greens.

One of the primary causes of Euro-deputies, despite their impressive level of activity, only having limited opportunities to get a European public sphere going in Sweden is the lack of a for-

malised mediation process between the European and the national levels. Their knowledge of the way the EU works, their insight into European specialist issues, their social ability to function at the European level are insufficiently exploited. The responsibility for coordinating both levels and formalising the role of the Euro-deputies as a mediating link is largely a matter for the government and the Riksdag.

The media, too, could help to focus on this problem and make it the subject of public debate. Instead of biased criticism of the travel subsidies of MEPs, objective criticism by the media could focus attention on the waste involved in Sweden not getting maximum benefit from these expensive journeys.

The New Euro-Deputies

Those MEPs whose term of office ended in 1999 were forced to operate under exceptional circumstances. The European elections of 1995 took place in the shadow of the referendum. The tension between opponents and supporters ran right across the largest party. Sweden's official European policy also developed a procrastinating and defensive orientation through the decision to stay outside the third stage of EMU for the time being.

Keeping a problem out of public debate may appear to be a rational step seen from a short-term viewpoint based on selfish party and strategic interests. In the longer term, a policy of silence may, however, bring about undesirable consequences both for party cohesion and the maintenance of executive power. The government had to pay a high price for keeping the EMU issue out of public debate.

The government's cautious attitude meant that several European politicians took the initiative on their own to stimulate public debate. The Social Democrat MEP and EU-critic, Sören Wibe, president of the organisation of Social Democrat EU-Critics, announced in October 1998 that he intended to use the surplus of his travel subsidy to fund an information campaign against EMU. Another initiative was taken by the Social Democrat members of the Riksdag, Per-Axel Sahlberg and Reynhold

Furustrand, who announced in a debate article that they had formed a Social Democrat network for a positive EMU-debate (Dagens Nyheter 22 Oct. 1998).

The Euro-deputies who took part in the study were asked for their views on both these initiatives and what is involved in "breaking out of the customary pattern of debate to create a 'new public sphere". By and large, and irrespective of their party allegiance, the MEPs welcomed these proposals with the argument "they can do whatever they like", that "the situation is wide-open" or that it is "good for the debate". There are, however, certain interesting nuances in the answers they provide which show that there is a difference between the traditional and the new parties in their attitudes to unconventional means of creating public debate.

The responses relating to Sören Wibe's information campaign against EMU make clear that the travel subsidies of Euro-deputies have been a sensitive subject. The MEPs turn out to use part of their travel payments for purposes they think are deserving. Members of the Left Party explained that they give their money to the parliamentary funds of their party and to international solidarity, the Greens indicated that the money goes to environmental and aid-organisations and the Liberal declared that he places some of his surplus in a Liberal foundation.

The representatives of the Green Party do not regard the Social Democrat individual initiatives as an alien phenomenon since their own party has its roots in the environmental and peace movements, which are based around networks, lobbying and unconventional methods of communication. The Greens point out that they are members of the so-called David Group, a Nordic network of EU-sceptics.

Another perspective on these initiatives is provided by one of the representatives of the Left Party, who considers that these attempts to make a powerful individual impact are necessary in the "media frenzy". One Euro-deputy considered that greater impact can be made with a debate article than by a motion to the party congress.

An explanation from the sociology of political parties for the development of these individual initiatives to structure the public sphere is provided by an MEP from the Centre Party. According to him, the parties are:

not constructed to deal with the new issues concerning nuclear power and EMU. What characterises the new issues is the fact that the cleavages do not run between the parties but through the parties. In the beginning we thought in one-dimensional terms, that all parties were strung together on a single string. Then we started talking about a surface—that the parties could be green, blue and red. Today we need to picture the parties in a box. There is a depth in these issues. Cohesion in the traditional parties is not that strong. There are always particular views that may be in better accord with those of other parties. I wonder if a new party system will evolve, or whether something entirely different will turn up? The party system is fairly young after all, it's not really credible to think it will last all that long.

The responses of the Euro-deputies give rise to a more general reflection. The individual initiatives to set up networks and participate in groups which lie outside or over and above the individual parties suggest that the traditional organisation of the parties no longer works particularly well as a platform for open discussion on the new transnational issues. In the traditional parties, too, which are united on the EU-issue, new platforms and alliances are being created at the European level. Working on an individual basis outside the party to create new forms of communication is emblematic of the fact that the organisational framework of the national parties has become too constricted to encompass the development of an open European culture of debate.

In the course of our interviews, the respondents were given a chance to draw lessons from their time as MEPs. What would they like to change if they remained in office for a further term?

The Swedish Euro-deputies can be divided up into different groups depending on their general attitude to the EU. First, there are two extreme positions which are diametrically opposed, EU-opponents and EU-supporters. The representatives of these positions have not altered their extremely negative or positive attitudes during their years serving as MEPs. They may therefore also be termed unwavering in their attitudes. The value conflict of the referendum is still experienced by them as an open wound.

If the unwavering opponents were to remain in office for a further term, they would ensure that the functions of the EU-Parliament were drastically reduced. A certain tendency towards resignation can be discerned in this group. If, however, it were the unwavering supporters who were reelected they would seek to ensure a major expansion of the EU as a whole and of the powers of the parliament in particular. A common foreign and security policy is the primary goal of the EU-enthusiasts.

The remaining MEPs adopt a more pragmatic position. They have been affected by their years in parliament, they can see both the pro and cons of the EU, even though the disadvantages weigh heaviest for the critics and the advantages for the supporters. Even if their attitude to the EU as such has not altered, they have gained "a broader and deeper insight", as one of the MEPs puts it. They have put the referendum behind them and now see EU-issues as more complicated than when they started office.

These EU-pragmatists may be divided in turn into two groups, EU-critics and the EU-supporters. The pragmatic EU-critical attitude is expressed in the following statement by a Green:

> I am critical of the EU. I have been elected to parliament to do a job there. We cannot run an "Out of the EU" campaign in the European parliament. That is a campaign Swedish politicians must pursue in Sweden. That is not our role ... Our role instead is to conduct the debate with the voters. We should speak about why we are critics and what our criticism consists of.

If the pragmatically-minded EU-critics had a further term of office at their disposal, they would seek to ensure that a large number of those issues which are currently dealt with by the EU were brought back to the national level. They would work to introduce a paragraph in the accession treaty which would make excession from the EU possible and they would try to alter the system of travel subsidies. The position of the pragmatic EU-supporters is expressed in the following self-description:

> I think it is important for us to have a public dialogue, which I would play my part in. I would describe the pros and cons, as

there are both advantages and disadvantages to EU-membership. I would not try to disguise my own view, that I think the advantages outweigh the disadvantages. I think we can all gain something by not getting fixed in positions that are too entrenched.

The views of a similarly-minded MEP are expressed in an equally balanced way.

I feel very well-disposed to the EU, which is why I try to be critical of its bad aspects; the exaggerated bureaucracy, for example, or the lack of openness. These are important questions if we are going to gain the respect of the next generation.

On reelection, the pragmatic EU-supporters would increase the powers of parliament over the Commission, they would seek to ensure that parliament was able to depose individual commissioners and they would work to increase insight into the decision-making process of the Council of Ministers. In addition, they would devote themselves to getting certain issues treated in greater depth, such as agricultural and environmental issues and those to do with structural policy and equal opportunities. Given their more sceptical attitude, the EU-critics would strive to ensure that these and other issues were made subject to more rigorous debate.

All the Euro-deputies, irrespective of their attitude to the EU, want to reform the European Parliament. Among the proposals put forward are changing the workings of parliament by concentrating debate on issues which are the real concern of parliament, slimming down the number of committees, increasing the preparation time for debating issues, tightening up the meetings and the agenda, getting the location of the assembly restricted to a single city and simplifying the hodgepodge of regulations, directives, statutes and laws.

What I would like to see is the kind of legislative work through which we exercise real power coming to dominate the workings of parliament. For us to focus and concentrate on that kind of work.

One of the Left Party Euro-deputies provides the following answer to the question what he would change if reelected to another term of office:

> Getting us to concentrate on the legislative matters and getting rid of the rest. Dealing more thoroughly with legislative matters and in greater detail. Because the quality of the detailed work of the European Parliament is poor.

According to the Swedish representatives, concentrating the work of the European Parliament would help turn the parliament into a more prominent and visible forum for debate about Europe and its future. "Realistic, cynical, raw debate ... that's what I would like to see more of", as one MEP put it.

Who Listens to the Euro-Deputies?

This dream of a vital European debate remains a long way from reality. Sweden's first period as a member of the European Union makes clear the difficulty of getting a European public sphere operating at home.

As early as 1994, the referendum on EU-membership of that year led to a self-imposed blockage of the EU-issue which lasted until after the general election of 1998. Since referenda tend to lead to polarised value conflicts, there is good reason not to hold a referendum on the EMU-issue, but rather to allow the voters to decide the matter through general elections to the Riksdag. This presupposes, however, that the parties adopt clear and unambiguous positions at an early stage so that a reciprocal exchange of views can take place with the voters. The European debate would not be advanced by an information campaign run from the top.

The decision of the Riksdag to wait and see about EMU-membership also led in practice to a deliberate policy of silence on European issues. Short-term calculations of advantage counted for more than the European-oriented norm of creating a reciprocal, continuous and objective debate on European issues.

Moreover, the EU-Committee of the Riksdag has been shown

not to have made any great impact on public debate in Sweden. Our review of the matters dealt with by the EU-Committee and its press coverage during the autumn of 1998 leads to the conclusion that a powerful link is still missing between this new domestic EU-institution and public life in Sweden. The matters dealt with by the EU-Committee are usually of the kind that requires a skilled interpreter who can explain the meaning of the issues and how they are being dealt with.

We have also examined how MEPs are trying to help to construct a public European sphere. The Euro-deputy represents a new type of politician who, paradoxically, shares a prominent characteristic with the Florentine diplomat Niccolò Machiavelli. During the end of the fifteenth century he covered over 15,000 kilometres on horseback while carrying out his missions abroad. He was shut out of politics and summarised the insights he made on his travels in the celebrated book, The Prince. The Swedish MEPs also lack formally constituted and open arenas in their homeland in which to report back on their journeys abroad on an ongoing basis. The Swedish homeland fails to offer the country's Euro-deputies an obvious and recurring opportunity to recount the experiences of their travels in Europe.

There is, therefore, a preponderant risk that a group of professional politicians is being shaped who are out of touch with Sweden and feel at home neither in Europe nor in Sweden but possibly only in their travels. This travelling cadre of Swedish European professional politicians are emissaries on issues that are difficult to mediate through the kind of politics that is conducted at the local, regional and central government levels in Sweden.

It is the view of political scientists Jon Pierre and Anders Widefeldt (1994) that the traditional Swedish parties are distinguished by a so-called stratarchic organisational model. The party organisations at the local, regional and central levels act relatively independently of one another and react to the various external problems in their own way. This has led to the difficult problem of integrating the different strata of the party. The evolution of new parties may be partly explained by the fact that this problem of integration has not been solved by the traditional parties.

Now that a further stratum, the European, has been added on,

this problem of integration is becoming even more difficult. The individual initiatives on the part of MEPs may be seen as symptoms of the inability of the parties to deal with the problem of integration. It is unlikely that the problem can be solved by tightening party discipline and by formally mandating MEPs to toe the party line. A governing party which vacillates instead of setting goals for European policy encourages in the long term not simply individual attempts to break free but also the chances of the parties with which it cooperates to gain a higher profile for themselves as critics or opponents.

These developments mean that politics is being conducted in parallel on different levels. As a result, the political parties are faced with major challenges. They are being forced to organise links between different levels: the local, regional, national and the European. Traditional mechanisms and institutions are no longer adequate. The parties can neither solve the problem by rigidity, i.e. tightened party discipline, or symbolic politics, such as increased personalisation of politics by nominating celebrities to their lists of candidates. They can only tackle the problem by being flexible, i.e. by adapting and renewing their organisational structures.

First, new political forms have to be created at the different levels, particularly in the form of associations, movements, cooperative groups and networks. The task of the party apparatus will be to stimulate these new political ways of working and to coordinate their activities.

Second, it is necessary to coordinate and mediate the old national organisations and institutions with the new European institutions. The activities of the EU-Committee require improved public relations.

Third, it is necessary to create new institutionalised arenas for political debate and dialogue with representatives of organisations and movements which act on the different levels. A positive step in this direction would be to give MEPs their own formalised open arena for reporting-back.

Fourth, it is necessary to open out the political culture to a renewal of values. This presupposes that the main political actors are prepared to reevaluate their short term calculations of advantage.

Sweden obviously has great problems in developing its national culture of debate so that it also encompasses a European debate characterised by reciprocity, objectivity and continuity. There are, therefore, good reasons to state that Sweden, as a member state, suffers from a democratic deficit in its attempts to discuss European issues with its citizens. The question is whether a properly functioning European public sphere exists in Sweden. The answer has to be in the negative.

5 Why Vote for Individual Candidates?

Elections are a fundamental aspect of democracy. When the aim is to assess whether a state is democratic, the first question most frequently asked is to what extent free and fair elections are held at regular intervals in a country. Given that elections are a defining feature of a democratic system, it is paradoxical that democracies demonstrate such wide variation in their choice of electoral system. This arises because elections, just like other institutions in a political system, fulfil several functions. These are not always perfectly in harmony. The requirements of popular, constitutional and effective government affect the electoral system just as much as they do democracy as a whole. How a state designs its electoral system says a great deal about the emphasis placed on the different aspects of democracy.

Modern democracy is representative: the people do not rule directly but through their elected representatives. Ensuring that representation is acceptable to a majority of voters is a primary task for all electoral systems.

In purely linguistic terms, to "represent" can mean two things. The literal meaning is "to render"; in political contexts this means that a representative puts forward ideas and viewpoints on behalf of the people he represents. In the figurative sense representation means "to stand instead of" someone, a representative embodies a broader collective of voters or citizens.[1]

Representation in the first sense may be referred to as the representativeness of opinion. Ideological declarations and party

[1] In her now classic work The Concept of Representation (1967), Hanna F. Pitkin puts forward the paired concepts of acting for and standing for. The latter requirement involves representatives not only acting for their voters but also embodying their electorate.

manifestos help to ensure adequate representation in this respect. As the positions of the parties and the candidates become widely known, the voters are able to vote for those with the same ideas as themselves. In this way the representatives elected will correspond to the pattern of opinions obtaining among the electorate.

The latter aspect also involves the notion of social representativeness. Elected representatives should not only represent the ideas and aspirations of the voters; they should also constitute a cross-section of the electorate in terms of social characteristics. This requirement complements the notion of representativeness of opinion. It is a hard-won lesson of democracy that the cause of a population group cannot be pleaded effectively if none of their representatives is a member of the same group.

Geographical representativeness is to some extent a variant of social representativeness. Most countries are divided into constituencies so that every part of the country is guaranteed at least a seat of its own in parliament.

Representation may, however, also be seen as a relation of confidence. Citizens may desire to be represented by specific persons because they have confidence in them as individuals. Confidence of this kind may arise even at a distance; a citizen may follow closely the activities of a politician in public life and come to believe that the latter is a particularly trustworthy person. Whatever the case may be, the issue of confidence is an inherent part of systems which encourage direct contact between the voter and the representative.

Elections should, however, not only decide the composition of parliament in terms of parties and individuals. A link should also be established between the outcome of the ballot and the composition of executive power. Apart from the minority of democratic states which have presidential rule, executive power is vested in the government.

Accepting the requirement that the citizens should exercise the maximum degree of influence over elections means, first, that the composition of parliament in party political and individual terms should reflect the wishes of the voters to the greatest extent possible. Second, there should be the closest possible agreement between the outcome of the elections and the government which comes to power as a result.

In practice this equation is one that has proved difficult to solve. Particularly if the parties in parliament are many and widely divergent it is often all but impossible to follow the principle that "the winners" should form the government. Mutually incompatible parties may very well be the victors in the same election. Moreover, it is frequently difficult to get an effective government in place solely on the basis of the election result. The citizen power that the voters exercise concerning the composition of parliament may become a problem when the requirement for democratic effectiveness is to be met.

The third democratic requirement also has a bearing on the electoral system. The system should meet the conditions made on public institutions by the rule of law. An electoral system should not put voters in a situation of inequality. It should also be designed so that the citizens understand the meaning of their electoral actions.

Completely satisfying these requirements is difficult. A maximum degree of voter influence on the composition of parliament may lead to an electoral outcome that is difficult to interpret. This may involve problems when it comes to getting an effective government in place. An emphasis on executive effectiveness may require electoral arrangements in which significant groups come to see themselves as overlooked. If this is the case, the legitimacy of democracy may suffer. It is possible to construct the electoral system in such a way as to meet the needs the composition of the electorate gives rise to. On the other hand, the risk exists that the system will become so complicated that it is impossible for the common man to understand it.

The world's democracies have electoral systems which place varying degrees of emphasis on the requirements referred to above. Frequently, there is a correspondence between the social composition of the countries and the electoral system they adopt. If a country has many different population segments, linguistic or religious groups for example, this places other requirements on the electoral system than in a homogeneous society. The size and regional variations of the countries may also have a role to play. The differences between political cultures, the American may be contrasted with the Swedish, for example, is frequently considered to explain the variations in the electoral system. The rela-

tionship between institutions, including the electoral system, and political culture may, however, with equal probability be the reverse. When people get used to elections being arranged in a particular way, this has an affect on their view of politics. Thus an electorate in one country may require clarity with regard to the alternative governments on offer, while in another country it is the quality of representativeness that is emphasised. Electoral systems may also lead to certain countries being party-centred while others emphasise the role of individuals and political leaders.

Comprehensive reforms of electoral systems are undertaken only sparingly. Sweden is no exception in this regard. One has to go back to 1909, when proportional elections replaced majority voting to the second chamber of the Riksdag, to find a major change. On the other hand, the electoral system is regularly made the subject of commissions of inquiry in Sweden. A particularly lively debate, on the basis of the findings of a series of commissions of inquiry, took place prior to the reform referred to as "voting for individual candidates". An element of preferential voting was first introduced on a broad scale in the general election of 1998.

In this chapter, the debate is examined in tandem with an analysis of the reform introducing preferential voting. A study of this kind may provide insight into the debate on democracy in Sweden while being located in a comparative context. The study may be used to illuminate several interesting questions. What were the arguments used both for and against voting for individual candidates? Which concepts and models of representation came into focus in the course of the debate? How were the tensions dealt with between the differing requirements of popular, constitutional and effective government? Which foreign models were discussed and how were they evaluated? Can reference be made to a particularly Swedish perspective on the significance of elections for democracy?

Electoral Systems, Parties and Candidates

While detailed consideration of the electoral systems of the world's democracies reveals great variation, they may be divided—with

certain exceptions—into a few main categories. The fundamental division is drawn between majoritarian and proportional systems of election. In the former, the country is divided into a large number of single-member constituencies, in which only a single seat is at a stake. The candidate and the party which have won the most votes in the constituency win the seat, irrespective of whether they have gained over fifty per cent of the votes or not. In proportional elections, several seats are allocated to a constituency, and the lists of the parties gain seats in proportion to the percentage of votes they gained in the constituency. As a general rule, majoritarian elections favour the growth of two equally strong parties, while it is difficult for additional parties to make an impact. Proportional elections make possible the representation of a greater number of parties. Proportional systems have therefore been criticised for contributing to the development of fragmented party systems, which make it difficult to form stable majority governments. Majority elections are particularly common in the English-speaking world, while proportionalism is usually associated with continental Europe.

In addition to these systems, there are a number of specialised models. Elections in two rounds of balloting—associated most often with France, despite the fact that that country has not implemented the system on a consistent basis—is one of these. Here the candidates and party lists compete freely at first. In the second ballot, an electoral threshold is often applied to exclude the weakest candidates. The system is not considered to militate against small parties, but encourages cooperation within broader alliances of ideologically related parties in the second round.

The Irish electoral system is often described as a separate variant. It is customary to refer to it as the Single Transferable Vote. In this system, one can vote for more than one candidate at the same time; in which case the voter has to rank them in order of preference. This electoral system makes it possible for the voters not only to indicate which candidate or party they prefer but also which they *find acceptable*. As the rankings of the voters can contain candidates for several parties, this system makes it difficult for the parties to control the outcome of the elections.

The extent to which it is possible to vote for individual candi-

dates varies just as widely, even between countries which belong to the same main category of electoral system. It is often believed that majority elections in single-member constituencies place a strong emphasis on the individual, since the parties can only put forward one candidate each in the constituency and the campaign turns to a large extent on the struggle between them. On the other hand, the voters have no real choice between candidates. Since there are no alternative candidates representing the same party, the voters are forced to some extent to choose between candidate and party. If they really wish to vote for an individual candidate, they would have at the same time to refrain from indicating a party sympathy. The fact that politics, as in England and the US, is individualised does not therefore mean that they implement a system of preferential voting in the strict sense.[2]

In corresponding fashion, proportional electoral systems are often seen as exclusively a choice between parties. Here it is the parties' lists of candidates rather than individual candidates which compete against each other. Once again, this view is correct in general terms, although it should not be allowed to obscure the degree of variation which occurs between different countries. In some countries, including Sweden, elections are to all extents and purposes a choice between parties. It is the internally assigned ranking of its candidates by each party which determines which candidates have a chance of election. When casting their votes, voters have little opportunity in practice to affect which individuals will make up the composition of parliament.

In other countries, Belgium and Denmark for example, the ranking of candidates by the parties is also a significant factor but the voters are free to ignore this ranking by choosing to cast their vote for an individual. Finally, systems also exist in which voting for individual candidates is compulsory. Here the parties also put up several candidates, but which particular candidates are elected depends solely on the tally of their individual votes. *The number* of candidates which represent a particular party is determined by the total number of votes cast for the candidates of the party; it is

[2] This characteristic applies to all systems with single-member constituencies, e.g. the French elections with two rounds of balloting.

the number of votes cast for each candidate which determines *which* candidates are elected. Finland serves as the most widely known example, although a similar system is also currently implemented in Poland.

It is, however, the electoral arrangements in Ireland which provide voters with the greatest degree of freedom when casting their votes. By being able to put together their own lists and rankings of the candidates they find acceptable, the voters may opt to emphasise the choice of party, or a choice of party and candidate, or to vote exclusively for an individual.

Sweden enjoyed one of the most party-centred electoral systems in the democratic world up to and including the general elections of 1994 (Johansson & Möller 1998, p. 39). The selection of individual MPs was not primarily determined by the voters on the day of the election but by the nomination procedures of the political parties. The decisive factor for the Swedish MP *in spe* was whether or not he or she had managed to gain a "winnable position" on the party list. The right to nominate candidates (*fria nomineringsrätten*) offered voters a considerable measure of freedom in principle, but this means of exercising power was purely theoretical, in relation to parliamentary elections at least. In municipal elections, this right of the citizen to nominate candidates occasionally had consequences in real terms. However, most people found its effects highly questionable (Johansson & Möller 1998, p. 47 f.).

The element of preferential voting which was first fully introduced at the elections of 1998, meant that the voters were able to cast a voluntary vote for an individual. It was the Danish electoral system which served as the main prototype.

An Eternal Question in Swedish Politics

The issue of voting for individual candidates has been the subject of political debate in Sweden during the whole of the democratic era. Although it has not been a major bone of contention, a reform of electoral law aimed at achieving an increased measure of preferential voting has always had its champions. As Sweden's electoral laws have been subject to review on several occasions,

this form of voting has formed part of the range of issues which have been examined by various commissions of inquiry.

Official inquiries such as the report by the experts on proportional representation in 1918, the Commission of Inquiry into the Constitution in 1963, the Commission of Inquiry into Preferential Voting and Constituencies in 1977, the Democracy Committee of 1987 and the Committee on Preferential Voting of 1993 have all put forward proposals concerning the possibility of voting for individual candidates in Sweden. Only the proposals of the last mentioned commission were, however, to lead to an actual reform. At the elections of 1994, voting for individual candidates on a voluntary basis was experimented with in seven municipalities. The following year, the first nationwide election based on this system was held, when the Swedish members of the European parliament were chosen by the people. By the end of 1996, a broad measure of consensus had been reached by the parties on the new electoral law, which was passed by parliament in April 1997. Voluntary voting for individual candidates was introduced, with an electoral threshold set at eight per cent for votes cast for individual candidates in the parliamentary elections and at five per cent for the elections to the municipal and county council.

The previous commissions of inquiry had produced a range of proposals for increasing the element of preferential voting in Swedish politics. These failed to achieve any concrete outcome in electoral law. As early as 1918, the experts on proportional elections put forward preferential voting along the lines of the single transferable vote model referred to above, i.e. the Irish system. The report by the Commission of Inquiry into the Constitution contained a proposal on constituency elections with compulsory voting for individual candidates. This model was influenced by the Danish system, but went further than the latter in incorporating the idea of compulsory voting for individual candidates. The commission of inquiry of 1977 also recommended the introduction of voting for individual candidates, this time on the model of the Belgian system. The proposal put forward ten years later by the Democracy Committee was that the voters should be given the option of putting the name of one of the candidates at the top of the ballot list if they so wished.

The study carried out by the SNS Democratic Audit has taken account of these commissions of inquiry in its analysis of the Swedish debate. The analysis of the broader debate has, however, been restricted to the process which led to the current system of voting for individual candidates. This means that parliamentary debates, motions and laws passed during the 1990s have been reviewed. The report of the Committee on Preferential Voting and the documentation that inquiry involved have been examined in detail. This official material has been complemented by an analysis of the press debate following the publication of the inquiry's report in 1993. The report and the first elections in which the proposed system was tested inspired a lively debate in the newspapers. Naturally this debate intensified prior to the parliamentary elections of 1998. A range of commentary and analysis was also published immediately after the election.[3]

The Silence of the Parties

Major reforms in Swedish politics are usually preceded by wide-ranging debates with parties and party leaders in key roles. The positions are hammered out internally within the parties and then put forward with the active participation of the most important party representatives.

The issue of voting for individual candidates also led to a major debate which was to recur throughout the 1990s. Its breadth can scarcely be criticised. However, clearly formulated party positions were conspicuous by their absence, and a search to find any of the key figures in Swedish parliamentary life among those taking part in the debate would for the most part be in vain. The explanation lies in the nature of the issue, party attitudes vis-à-vis the system introduced and the eventual design of voting for individual candidates in Sweden.

[3] Svenska Dagbladet and Dagens Nyheter were the most important of the newspapers examined. Significant debate and reporting were also to be found in other newspapers including Göteborgs-Posten, Sydsvenska Dagbladet, Skånska Dagbladet, Arbetet Nyheterna, Dagens Politik and Aftonbladet.

The issue of voting for individual candidates is a difficult one from the point of view of the party leadership. They have been involved in trying to create a balance based on an arrangement in which the candidates acquire their legitimacy through an internal democratic process. Voting for individual candidates introduces an entirely new ground of legitimacy, a direct link between the candidate and the voter, which makes this balancing act difficult. It is true that parties differ among themselves in relation to the popularity of preferential voting; on the nonsocialist side it has significantly more champions than within the Left and among the Greens. Irrespective of the shade of political opinion, preferential voting is problematic for anyone who has to lead or administer a political party.

The system that was introduced is patently a compromise, which is the normal course of events in Swedish reform politics. However, from the outset the model chosen lacked active proponents among the parties. Those who campaigned for preferential voting would have liked to go further towards a purer form, while the sceptics would have preferred to avoid the reform entirely. The sceptics had no reason to campaign in favour of the new arrangement despite the fact that force of circumstance had forced them to swallow the compromise. Nor were the enthusiasts inspired to undertake any active public relations work on behalf of the system.

As voting for individual candidates was designed to take place on a voluntary basis in Sweden, it might be deemed inappropriate if the party leaderships were actively to encourage the electorate to vote for individual candidates. After all, agreement has already been reached within the parties by democratic means as to the ranking of their candidates. To encourage the voters afterwards to bypass the ranking would obviously have involved a contradiction. The party secretary of the Conservatives, Gunnar Hökmark, who put himself forward as a supporter of preferential voting, was thus to declare that the party should not encourage the voters to vote for particular candidates; that was the proper task of the candidates themselves (Dagens Nyheter 2 Nov. 1992).

While the politicians and party members obviously figure in the material, only rarely do the parties contribute collective state-

ments regarding the issue of voting for individual candidates. Independent commentators were to take on a major role in the debate. The contribution made by "retired" politicians such as previous members of parliament and the chairmen of committees was particularly noteworthy.

Representation: Parties

The introduction to the report by the Committee on Preferential Voting is brutally candid:

> Representative democracy in Sweden is based on the fundamental premise that political activity should be exercised first and foremost through the political parties (SOU 1993:21, p. 15).

This is a long way from the declaration in the Instrument of Government that "all public power proceeds from the people", and a long way from all the ceremonial phrases concerning the freely chosen delegates of the people representing their electors at meetings of parliament. The issue here is to present an honest description of reality; the role of the parties has been of crucial importance for so long in Swedish politics that it has become a fundamental way of thought to see them as the key to representative democracy. The actual circumstances serve as the starting-point for the Committee, not abstract ideals.

The interest of the Committee in broad discussions of principle concerning democracy and representation was further reduced by the terms in which its remit was formulated: "Elections shall continue to be of the nature of elections between parties" (SOU 1993:21, appendix 1, p. 4). On this point a literal continuity exists with the work of the Democracy Committee, whose remit stated:

> Political democracy must continue to be representative and to be exercised through the political parties ... Members of parliament should be considered essentially as representatives of their parties and constituencies (SOU 1987:6, p. 302).

The arguments put forward by the Committee on Preferential Voting for retaining the influence of parties were similar:

> What argues in favour of a large measure of party influence is that the active and committed members of the party may reasonably be said to be better acquainted than voters in general with which individuals are best suited to *represent the party* (SOU 1993:21, p. 50, our italics).

This way of thinking also had an impact in the Bill put forward by the government: "... the parties have a legitimate interest in being able to influence the selection of candidates. The party is better acquainted with the abilities of the candidates to *realise the ideas and goals of the party*" (prop. 1996/97:70, p. 121, our italics).

All these statements are based on the notion that the parties as such have a right of representation. The principle of the people as the supreme power is reduced to a subordinate clause:

> *Moreover*, it may be said to be attractive from the point of view of democracy that the voters be given the option of more directly influencing the election of individuals who are to represent them in the governing bodies (SOU 1993:21, 50, our italics).
>
> *To this should be added* the principle that is fundamental to our polity that all power proceeds from the people, and it is therefore the voters who should decide who should represent them (prop. 1996/7:70, p.121, our italics).

The contrast with the debate as conducted in the newspapers is striking. Not because this aspect is missing from the debate, it is a key element of many of the contributions. Nevertheless debaters who put forward the primary right of the parties to representation are noticeably thin on the ground. The critics are many, active and rather voluble. Those who champion this principle are few and relatively subdued. Given that the parties—with only one or two exceptions—chose to lie low, the arguments in favour of this viewpoint were obscured.

When arguments in favour of the right of political parties to re-

presentation did appear, the initiative appeared to lie with the interviewing journalists. This was how the then party secretary of the Green Party, Kjell Dahlström, came to express scepticism as to whether it was a good idea to let the voters decide which candidates should be elected. He insisted that it was not the voters who had more and better information about the suitability of the candidates but the parties themselves. Unnamed representatives of the Left Party expressed fears that voting for individual candidates would mean an emphasis on the individual qualities of the candidates instead of the parties' manifestos. Left Party members in Gothenburg referred to "strict orders from on high: refrain from individual election campaigns" (Göteborgs-Posten 15 Feb. 1998; Svenska Dagbladet 27 Mar. 1998).

The Centre Party member, Bertil Fiskesjö, thought that preferential voting offered a possible means of strengthening the representation of the party as it would simultaneously weaken the centralised party leadership. He emphasised the significance of the parliamentary factions of the Riksdag as "the most exceptionally important body within a party". If those individuals who make up the parliamentary groups are more sharply delineated, the relative status of the parliamentary group in political terms will also increase. Here Fiskesjö touched on one of the classic conflicts in the history of parliamentary government: the opposition between party organisations and parliamentary groups. What he was apparently arguing for was that the focus should shift towards the representatives themselves, i.e. the parliamentary group, instead of the organisation (Svenska Dagbladet 1 Jan. 1995).

Most of the other participants in the debate were critical of party dominance. A particular voice in the debate was that of the former Conservative MP Hugo Hegeland. He took an active part in the debate and expressed some of the frustration he had experienced when serving as an MP:

> I sat in the Riksdag for twelve years and pushed the yes and no buttons by turns. I have never before felt so annihilated, i.e. treated (NB: not considered) like a total zero ... a button-pushing robot.

> I am not alone in this view. Emeritus Professor Gunnar Björck once said ... that during his ten years in the Riksdag his specialist knowledge was never made use of (Svenska Dagbladet 24 Jan. 1995).

Hegeland's conclusion was defeatist: the Swedish system had once and for all become a party-controlled system, and no reform to introduce voting for individual candidates could change that.

Several debaters considered the problem from the perspective of power. With whom should decision-making power lie when it comes to the composition of parliament? The political scientist, Tommy Möller, viewed the struggle between voting for parties and voting for individual candidates as a conflict between two ideologies of representation: in the first case it is the party officials who are the employers of members of parliament, in the second it is the electorate. When preferential voting is introduced, it is the voters and the individual members of parliament who are on the winning side, while the party central offices are the losers (Dagens Politik 30 Jan. 1997).

Another line of argument makes use of a historical perspective concerning the party system:

> (One has to) remember that political ideologies and active commitment to social movements are of less importance to people today than for the immediately preceding generations. The social movements were primarily functions of (or reactions to) industrialisation. In the consumer society of the post-industrial world, the movements play nothing like the same role (Falu-Kuriren 19 Mar. 1993).

> Sooner or later we will have to rethink Swedish politics thoroughly, and this requires ideas and forms of energy from individuals capable of liberating themselves from the current party manifestos. Especially as the origins of many of today's established parties are to be found in a totally different form of society (Sven Carlioth, chair of the Citizens' Rights Movement's Stockholm branch, article in Svenska Dagbladet 30 Jan. 1998).

These contributions allude to a classic thesis concerning the "freezing of the party systems", formulated by Seymour M. Lipset and Stein Rokkan (1967). Its tenor is that the party systems of today in Western Europe reflect the structure of conflict that pertained in those societies at the start of the 1920s. Once these lines of conflict had led to the formation of organised parties, more recent social changes were to have little effect on them. The party system continued to live a life of its own despite the fact that the society around it was going through major transformations.

Many contributors to the debate emphasised the principle of the sovereignty of the voters over the party central offices. A parliamentary motion by the New Democrats criticised the emphasis on the role of the parties in the remit of the Committee on Preferential Voting: "There is no reason to declare the electorate incompetent, as the remit does, in favour of the wisdom of party circles" (motion 1991/92:K227). The Social Democrat, Martin Nilsson, had concerns in relation to a pure system of preferential voting. In his view, a more prudent reform in the direction of voting for individual candidates was, however, something that would bring considerable benefits: "In real terms parliament will become the supreme decision-making body to a greater extent" (motion 1991/92:K219).

A recurrent theme in the debate critical of the parties was that the dominance exercised by the parties over the selection of candidates put the cart before the horse. The contributors were keen to underline the fact that the principals of members of parliament are, or ought to be, the people rather than "party and trade union representatives" (Olle Schmidt, Arbetarbladet 2 June 1993). The Conservative local and European politician, Bengt Mollstedt, stressed that the link between the electorate and the parties has been weakened, which is why the voters do not primarily identify with a particular party. Voting for individual candidates may lead to a strengthening of the ideological profile of the candidates which would result in a diminishing need for parties to exist. It may be a relief to voters to be able to vote for a candidate without having to "buy the whole party manifesto" (Göteborgs-Posten 21 Aug. 1997).

An evaluation of this part of the debate should take note both

of the intensity and range of the discussion and of its quality. The number of contributions in official political contexts and in the press is, it must be said, considerable, and the extent of the involvement of the contributors should not be overlooked. As a whole, however, the debate is peculiarly split, which means that its range and its dialogical nature nevertheless leave quite a lot to be desired. The lack of clearly marked party positions makes the debate lopsided. The debating sequence consists therefore largely of two autonomous blocs: the commission's report and its preparatory works and the reasoning in the government's bill on the one hand, the rest of the debate on the other.

The arguments of the former put forward a plea to retain the primary right of representation for the parties, while the latter argues for a system that is less controlled by the parties. The connection between the two lines of argument is, however, tenuous. The party-critical contributors fail to deal thoroughly with the arguments of the Committee and the government, and the independent debate lacks, for the most part, proponents for the proposals made by the Committee. As a result the weak points of the various standpoints are incompletely examined. To too great an extent the contributors are speaking at cross purposes. Yet one can place a question mark beside some of the arguments on both sides. Those who argue for continued party dominance emphasise the need for candidates who can best represent the "ideology and manifesto" of the party. It is, however, questionable what significance such long term goals have on the decisions made by the voters—how well do the voters actually know such aspects of the parties? The factual contents of campaigns are usually dominated by considerably more topical matters, such as qualifying periods for benefits, nuclear power and membership of EMU. Given the level of knowledge of the citizens concerning Swedish politics as a whole (cf. Petersson et al. 1998), one has to be satisfied if voters are familiar with these more current issues.

The party-critical debate can be accused of exaggerated expectations in relation to the consequences of voting for individual candidates. A look at the countries whose system of preferential voting figured most prominently in the debate shows that there, as well, the parties are the most important factor (cf. Bogdanor

1985, p. 293 f.). Changes to the reform which introduced voting for individual candidates cannot be expected to erase the dominance of the parties.

All in all, the debate is marked by the fact that no one was seriously committed to the particular model of preferential voting that was introduced. Moreover, the split in the debate was accentuated by the fact that many of the most active contributors were representatives of the parliamentary opposition, while the government side was more poorly represented.

Representation: Groups

> Those voters who deem it appropriate to increase the representation in parliament of women, younger or older people, individuals with links to certain social movements or certain sections of trade and industry, or to the voter's local area should have the additional opportunity to cast their vote for individuals *within the framework of a vote cast for a party* (SOU 1977:94, p. 164, italics in the original).

The issue of social representativeness was formulated in terms both clear and broad in the report of 1977. Both in the report by the Committee on Preferential Voting of 1993 and in the general debate that took place in the 1990s, the focus was, however, more specific. To all intents and purposes, the debate was concerned with the effects on the representation of women.

The Committee on Preferential Voting devoted a great deal of attention to the issue of the representation of women. The proportion of women in representative assemblies is compared over time and between countries and electoral systems. The conclusion drawn is that while countries with majoritarian elections evince a lower level of representation of women than countries with proportional elections, there is nothing in the latter group to indicate that voting for individual candidates disadvantages women. The representation of women is by far the greatest in the Nordic countries where there are both purely party-list based electoral systems (Sweden, Norway), systems with voluntary

voting for individual candidates (Denmark) and systems with mandatory preferential voting within the framework of party lists (Finland). The Finnish case in particular—Finland has achieved a significant proportion of female representatives longer than any other country—appears to have played an important role for the Committee in arriving at its conclusion.

In the press debate, both optimism and pessimism were manifested in relation to the effects on the representation of women. The optimists emphasised the opportunities voting for individual candidates would open up for strengthening the position of women in politics; this was an opportunity not to be missed. The pessimists appeared to consider the level of representation that had been achieved as a result of the way the parties ranked candidates in order of preference. Now that the ranking could be ignored, the position of women might be sacrificed to opinions that were difficult to predict; what had already been achieved needed to be defended.

Many commentators and contributors to the debate had been inspired by the careful optimism of the Committee on Preferential Voting and went further in what they envisaged:

> ... this opens out positive opportunities for women to vote themselves into victory at the elections.
>
> The women's associations of the parties in question will become—to the extent that they are not already—major power players in the nomination procedures. At the very least this may lead to ensuring that every other name on the ballot sheet is that of a women ... (Göteborgs-Posten 19 Mar. 1993).

> The proposals of the Committee on Preferential Voting ... provide women of resolve with hitherto undreamed of opportunities to break the stranglehold of the old men in parliament, the county councils and the municipalities (Gert Gelotte, Göteborgs-Posten 17 Mar. 1993).

The most animated debate on the representation of women was conducted between Inger Segelström and Fredrik Reinfeldt. Segelström was contributing as chair of the Social Democratic

Women's Association, while the Conservative MP Reinfeldt had made a name for himself as perhaps the country's most active proponent of preferential voting; such activities included starting Sweden's first electoral association for voting for individual candidates, "Vote Reinfeldt 98".

Segelström was one of the few prominent party representatives with a clear message. She expressed

> ... doubt as to how the large group of women will be able to make their voice heard since by tradition and upbringing we are not used to asserting ourselves or putting ourselves at the centre of things the way certain men do.
>
> I (am) also concerned about who will be interested in sponsoring a single mother with three children when they can get a young man who can represent the motor industry, for example, with all its financial resources (Dagens Politik 13 June 1996).

Reinfeldt was not lacking for an answer:

> In the corporatist milieu in which Segelström operates, the voters have no part to play in the argument. All that milieu deals with is interest politics and balancing the power of one group against another. This makes Segelström a powerful player who thinks she represents the interests of all women ...
>
> I am quite convinced, for instance, that the single mother with three children Segelström has used as an example on several occasions would seem a much better bet to the voters when choosing whom to support (than single-issue sensationalist males who were in the hands of various financial interests) (Dagens Politik 21 June 1996).

There is generally a link among the contributions between the broad view taken of voting for individual candidates by the contributors and their expectations in relation to the representation of women. Peter Eriksson, then a member of the Parliamentary Standing Committee on the Constitution and MP for the Greens, who are in general sceptical of preferential voting, predicted that women would find political life more difficult (Svenska Dagbla-

det 1 Sept. 1998).[4] Correspondingly, the Liberal Olle Schmidt put forward a significantly more optimistic view of the opportunities for women to exploit voting for individual candidates (Arbetarbladet 2 June 1993).

Even though the discussion contained elements of the standard confrontation between the parties, much light was thrown on the issue of the representation of women in the course of the debate. Other social groups were, however, only mentioned sporadically. Preferential voting as a means to increase the representation of young people was touched on, as was the challenge issued by the National Association of Pensioners to vote for candidates who were committed to pensioners' issues (Dagens Nyheter 19 Aug. 1998). However, no trace of an exchange of views around these matters can be found in the broader debate.

The fact that the regional aspect is conspicuous by its absence from the debate is, however, most striking. Swedish debate would appear to be based on the notion that key political issues are equally relevant to all parts of the country. This also applies to the debate on voting for individual candidates. Broad ideological differences between the parties are considered to be important, as are the issues of group interest such as the representation of women. The fact that many major issues have a regional bias, or quite simply consist of a tug-of-war between regions, is seldom mentioned in the national debate. Issues of this kind, such as regional development decisions, ought nevertheless to engage to a considerable extent the interest of the voters in the regions concerned.

The fact that research has shown that an ever diminishing level of familiarity with the parliamentary candidates in the voter's particular constituency has gone hand in hand with an ever increasing familiarity with the party leaders and the other key political figures at national level (Holmberg 1998, p. 32 ff.) did not give rise to debate of any consequence. This accords well with the view taken by the parties' regional representatives: it is not the primary task of members of parliament to represent their own constituencies (Pierre 1998, p. 143).

[4] These doubts were supported to some extent by researchers; see Gilljam 1998, p. 29.

Yet the option of voting for individual candidates ought to appear of particular interest to the voter who is primarily concerned for his or her own region. It provides an opportunity to reward, or punish, candidates who worked, or did not work, successfully for the constituency. This is a contributing factor of such key significance that it ought to have been thoroughly illuminated in the debate.

Representation as a Relation of Confidence

What was evidently the most frequent argument used in favour of preferential voting concerned the effect on the relation between the voters and those elected to office. It is in the nature of things that this line of argument was used most frequently by contributors to the debate who were positively disposed towards voting for individual candidates; the reform is argued for in optimistic terms as a major potential improvement of political life.

The government's commissions of inquiry also express a degree of optimism in this regard. The Committee on Preferential Voting maintains that there is, as such, "no certain proof" that "an element of voting for individual candidates would have any dynamic effects in the form of an improved relationship between the voters and their elected representatives". The Committee nevertheless finds it to be a "reasonable supposition that a general individualisation of politics as a consequence of an increased element of voting for individual candidates will lead to positive effects in this regard" (SOU 1993:21, p. 54).

In the general debate, the participants were less cautious. Preferential voting was seen as the motive force in a dynamic chain as part of which a closer degree of contact between voters and elected representatives will lead to greater interest and activity in politics. Some of the contributors who argued exhaustively along these lines may serve as an illustration:

> We see three powerful reasons for having a system that permits "a real measure" of voting for individual candidates.
>
> The first has to do with citizens needing to be able to identify with their elected representatives.

> The second reason is that democracy needs to be revitalised ... the measure would increase the voters' interest, as politics would become less anonymous.
>
> Third, voters should be able to call their elected representatives directly to account. By voting for individuals, instead of the fixed lists of parties, voters would be given that choice (Nils Hast and Olle Reichenberg, Svenska Dagbladet 20 Jan. 1994).

> Addressing yourself to "your" MP does not form part of Swedish culture.
>
> Voting for individual candidates would be bound to create greater proximity between voters and elected representatives ... I think it will be more difficult for those candidates who lack a clear public profile than for those who get thoroughly involved in controversial matters (Olle Wästberg, Arbetet Nyheterna 9 Nov. 1997).

Several contributions analysed the effects of preferential voting on the strategic behaviour of parties and candidates. In his contribution to the debate, Herman Westrup considers a general increase in the importance of the election day itself as a probable consequence of voting for individual candidates. He thinks the parties will be forced to reconsider their selection of candidates from a different viewpoint than previously obtained; preferential voting affects the nomination process in a way that might be called "prophylactic". Individual candidates would have to be actively involved. They would also have to demonstrate a "broad political profile" since they would be competing with all the candidates and could therefore not count on adequate electoral support, if they represent too narrow a range of special interests (Skånska Dagbladet 8 Dec. 1996).

The candidates who fought active individual campaigns also underlined the significance of the direct links that voting for individual candidates creates between the voters and elected representatives. Anna Kinberg, a Conservative candidate in Stockholm, conducted an individual campaign that attracted a great deal of media attention. One of the things she stated in an interview was:

> I would be prepared to take up the cudgels against the party leadership on issues of major importance. That is the whole point of preferential voting, after all. It is the people who elected me to whom I have to be most loyal (Svenska Dagbladet 31 Aug. 1998).

Nevertheless, too little critical attention was paid to many of the consequences of closer links between individual representatives and their voters. Westrup's assertion on the effects on the parties' nomination procedures could just as easily have been turned on its head. It is the old system which encourages a thoroughgoing process of selection for candidates, since everyone knows that only a few of them have realistic chances of being elected. Placing candidates tainted by scandal, or all too obvious links to special interests, in a "winnable" position on the list probably involves a greater degree of risk-taking than a list where the voters can freely pick and choose among the candidates. Preferential voting may additionally lure parties into filling their candidate lists with representatives of organised special interests since these are the very people who may be thought able to mobilise larger segments of the electorate, which would favour the list as a whole.

The assertion concerning greater interest and activity on the part of voters could easily have been clarified with the help of comparative data from countries with or without preferential voting. What comparative research has been carried out fails to show systematic differences between countries with preferential voting and those with systems of closed party lists; this was also noted by the Committee (SOU 1993:21, p. 58).

Effectiveness

Electoral systems may have an impact on the effectiveness of the political system in two different ways. They can influence the internal cohesion of the parties, i.e. party discipline. They can also make the parties capable of cooperation to different degrees, i.e. affect their coalition-building potential. These two aspects are closely related: a party whose actions are disciplined and consist-

ent is a more reliable coalition partner than a party ravaged by internal factions. A disciplined party governing alone is likely to govern more effectively than a disunited party.

The Committee on Preferential Voting discussed the risks of party splits and political instability as consequences of a transition to voting for individual candidates. The Committee cited a number of research studies in this regard, but did not consider itself able to present any general conclusion. The closest it came was in a statement based on a study by Bo Särlvik to the effect that political instability would often appear to be a *cause* of adjustments to the electoral system.

Issues which touch on effectiveness and political stability were not what was most commonly discussed in the contributions to the general debate on preferential voting, but nor were they conspicuous by their absence. Naturally enough, it was the commentators who were critical of preferential voting who were dominant on this point. One exception was Claes-Göran Kjellander who first issued the challenge in a column in Dagens Nyheter "to test preferential voting", and subsequently declared:

> Set against the need for a system which promotes party stability and parliamentary authority is the interest of preserving representativeness and the spirit of democracy (Dagens Nyheter 9 July 1993).

In its coverage, Dagens Nyheter went on to illuminate further the problematic elements:

> It would be profoundly unfortunate were we to choose only the negative alternative, that is, if we weakened the parliamentary system at the same time as confidence in politics was undermined by yet another failed experiment with preferential voting (Dagens Nyheter 2 Sept. 1996).

Among the matters covered in subsequent features by Dagens Nyheter was a Social Democrat report which predicted internal party conflicts, "populism" and a focusing on individuals instead of specific issues as the consequences of voting for individual can-

didates. The description by the Danish political scientist, Lars Bille, of the changes in Denmark also attracted attention. Voting for individual candidates, according to Bille, had weakened the party organisations and the representation of the parties as a result. Many in Denmark had therefore started to argue in favour of moving to a system of voting exclusively for individual candidates (Dagens Nyheter 2 Nov. and 5 Nov. 1997).

Not all the commentators considered party discipline as an indiscriminately positive matter. Harry Schein presented a hypothetical arithmetical problem which showed that as a consequence of party discipline, parliament might come to vote against membership of EMU even though an overwhelming majority of individual MPs were in favour of membership. He called for greater freedom for MPs on issues where opinion is divided instead of the current system with its "unwarranted and often fundamentally undemocratic party discipline" (Dagens Nyheter 3 Oct. 1997).

An assessment of this part of the debate as a whole should call attention to the lack of broader analyses of the consequences. A weakening of the parties and of party discipline is referred to in relatively general terms, but the substantive issue is not clarified. The link with democratic effectiveness is not made obvious; above all, it is the relationship between electoral systems and the government that more light might have been shed on. It is in this area that we find two extremely topical aspects of Swedish politics which can be affected by greater fragmentation within the political parties.

First, one may wonder what it means for the effectiveness of Social Democracy if individual MPs by dint of a high personal vote start to set themselves up against the party leadership. The question is legitimate not least in the light of the fact that several of the most important political cleavages, European policy for instance, currently run right through the party.

Second, one may discuss the possible effects of preferential voting on the alternative government arrangements, i.e. a nonsocialist coalition. Does voting for individual candidates make it more or less probable that these parties can unite to form a coalition that offers a real alternative to a Social Democratic government?

It is surprising that these questions were not dealt with explicitly nor made key themes of the debate.

Intelligibility and Fairness

Among the starting points for the Committee on Preferential Voting was the need to ensure both intelligibility and fairness. The system to be devised could not be so complicated that the voter would not understand how it worked. Nor should it place the voters, the candidates and the parties in an unequal position.

Despite the fact that the design of the Swedish system of voting for individual candidates was expressly shaped by arguments of this kind, it was in these very respects that the reform was criticised. While several commentators criticised the system for being difficult to understand (Johansson and Möller 1998, p. 56), it was the aspect concerning fairness that caused most debate.

Most commentaries on this point were variations on the theme expressed by the leader in Dagens Nyheter in the following terms: "voting for individual candidates in a party-based system is problematic from the point of view of democracy" (9 Nov. 1997). What this actually meant was that voters who accept the ranking of candidates set by a party may be placed in an unfair position compared with citizens who chose to ignore the rankings.

This was a key problem in the process of inquiry into preferential voting and the design of the reform. Of the four primary requirements which "served as the guiding principles for ... commissions of inquiry charged with considering the matter of preferential voting", this was the first aspect to be mentioned:

> Small groups should not be given the opportunity to control voting for individual candidates to the detriment of larger groups of voters, who would perhaps prefer to pass the responsibility for the selection of individuals to the official party bodies (SOU 1993:21, p. 19).

During the inquiry proceedings into the issue of preferential voting, this requirement was referred to under two headings. First, it was used as an argument for making voting for individual candidates voluntary. Second, it was considered to argue for a relatively strict electoral threshold against votes cast for individuals. Both voluntary as opposed to compulsory voting for individual candi-

dates and the issue of the electoral threshold were taken up by a range of commentators. Most of those who examined the issues of voluntary voting and the threshold did not do so primarily from the point of view of fairness. Instead, they were most frequently critical because, in their view, the system would be so watered down that voting for individual candidates would come to seem a reform in name only.

In contrast, the argument in terms of fairness was used assiduously in relation to the conditions applying to those refraining from marking their ballot paper for a candidate as compared with those who chose to vote for an individual. An exhaustive contribution to the debate by Arvid Andersson may serve as an example on this point. The writer states that in the smaller constituencies approximately eleven thousand votes are required to ensure election. The eight per cent threshold would thus mean that a candidate in sixth place, for example, can bypass all the others on the list as long as he or she had obtained 880 individual votes:

> However, and this has been neglected in the propaganda for preferential voting, if the individual in sixth place in my example has received 880 crosses (that is, votes cast by voters who want first and foremost to elect the candidate in question), 92 per cent of the party's voters will have deemed the six-place accorded the candidate to be correct (Skånska Dagbladet 24 Feb. 1998).

Susanna Popova was thinking along the same lines in her column in Svenska Dagbladet: [5]

> A voter who does not cast a vote for an individual is not simply handing over his or her vote to the party of choice. Instead, power passes to those voters who vote for the same party and who vote for one of the candidates. If Social Democrat traditionalists, for example, refrain from setting a cross by the name

[5] According to a brochure issued by the National Tax Board, no voter who was satisfied with the ranking set by a party needed to set a tick by the name of any candidate (Dagens Nyheter 19 Aug. 1998). Cf. also Gilljam 1998, p. 29.

> of a particular candidate on the grounds that they are thus following the dictates of the party, then reformists who instead put a cross by the name of a candidate will gain greater influence over which candidates are elected (19 Aug. 1998).

This argument could be used both against voting for individual candidates or for an even more explicit form of preferential voting. Andersson's commentary considered compulsory voting for individual candidates as a possible solution to the problem. In other words, the problem is specific to the particular system of election by party list with *voluntary* preferential voting.

It is, however, a fascinating issue within democratic theory to what extent—from the point of view of fairness—one could and should equate those citizens who chose to cast their vote for individuals and those who refrain from doing so. Is the right of the latter being infringed on, if voting for an individual candidate leads to a different selection of individuals than the ranking of the candidates on the party list would indicate? There are three standpoints which would argue for a negative reply to this question.

First, there is nothing to stop voters casting their votes for individuals in line with the party rankings, i.e. voting for a candidate "in a winnable position".

Second, it is not possible to know how those voters who have voted solely for a party list have actually reasoned. There is no certain proof that votes cast for a party were intended as "by casting my vote for a party, my express wish is to have those representatives elected which the party has placed at the top of its list". It may just as well be the case that they do not consider it particulary important which of the candidates get elected, as long as the party is adequately represented. In the latter case, there is no contradiction between their desires and those of people voting for individual candidates.

Third, the sense in which voting for individual candidates may be considered a right should not be overlooked. The system offers the voters the right to vote for individual candidates. It runs counter to the spirit of democracy to argue that those who make use of a human right in so doing infringe on the right of those who do not make use of the said right. Surely no one would think to

equate those citizens who vote with those who chose to stay at home?

The discussion around this problem demonstrates the dilemma undeniably entailed in the Swedish compromise of preferential voting on a voluntary basis.

Not Just a Swedish Speciality: Foreign Prototypes

Electoral systems may easily be compared, and are of such a technical nature that they do not carry the same patriotic charge as many other social institutions. Both the commissions of inquiry into preferential voting in Sweden and the ensuing debate revealed great interest in alternative foreign models for preferential voting. For the most part, the evidence submitted for and against voting for individual candidates, as well as for and against different versions of preferential voting, was based on experience from other countries.

The terms of the remit of the Committee on Preferential Voting were of overriding importance when it came to the choice of which foreign models could in practice be contemplated for Sweden:

> It is a key point of departure that the nationwide proportional electoral system should be retained and that elections will continue to be of the nature of a choice between parties (SOU 1993:21, p. 4).

The requirement to ensure nationwide proportionality meant in practice that systems involving election by a majority in single-member constituencies were ruled out of consideration. Voting for individual candidates in the British and American sense was not on the agenda for Sweden. Quite correctly, the Committee was also to state that such an election did not, strictly speaking, provide any real form of preferential voting (between candidates of the same party) unless open primary elections were conducted.

The Committee presented four alternative models for preferential voting. The first was based on the German system of voting,

the second on the Belgian electoral quota model, while the other two were variants of the Danish system. The German model, which combines majority elections in single-member constituencies with elections based on regional lists, was ultimately considered to result in too extensive a measure of structural change to the party system and was therefore adjudged as falling outside the remit of the Commission. The Belgian system, on the other hand, was within its confines. Here, the real element of voting for individual candidates was, however, judged to be so minor that there was no point in proposing a reform based on this model. The ultimate recommendation of the Commission was based on a simplified and more streamlined version of the Danish system of preferential voting on a voluntary basis.

Before doing so, however, the Committee was obliged to rule on two further alternatives: the Finnish and the Irish systems:

> The remit thus excludes all proposals based on an exclusive form of preferential voting without any influence from the parties. For this reason, a system which permits the election of individual candidates without party allegiance, such as the Irish, does not meet the requirements. Furthermore, proposals to introduce a form of compulsory voting for individual candidates of the kind which exists in Finland cannot be considered since under that system a ballot form which indicates no preference for an individual candidate is ruled invalid (SOU 1993:21, p. 88).

This is a strict interpretation of the remit. The Irish system is described as though candidates without party allegiance were the norm. In actual fact, party affiliation naturally plays a major role in Ireland as well, despite the fact that voters sometimes select candidates from different parties among their preference votes. This does not mean, however, that voters do not make a choice between parties as well; most are likely to have such clear party sympathies and antipathies that the candidates of certain parties could rarely if ever be considered by them. Of course the option also exists of making it a legal requirement that all candidates appear on the ballot form under a party label. This would give the

political parties a monopoly on a definitive phase in the selection of candidates, namely the nomination procedure.

The Committee's interpretation of the remit "that elections shall continue to be of the nature of a choice between parties" counts against the Finnish system even more tellingly. The party lists form the fundamental element of the Finnish electoral system and it is party preferences that are clearly of greatest importance for the voters. The fact that the parties also allow the voters to determine which of their candidates get elected does not mean that individuals are more important than parties. Moreover, in contrast with the case of Ireland the voter may not vote for candidates from several different party lists. The Finnish electoral system does not therefore involve only compulsory voting for individual candidates but also in practice *compulsory voting for parties* at the same time. The parties de facto monopoly on the nomination of candidates further entrenches the influence wielded by the parties. There is thus no obvious contradiction between compulsory voting for individual candidates and the primary character of the elections as an election between parties.

The Committee also adduces other objections against these two systems. It is clearly with a glance at the Irish system that voting for more than a single candidate and other forms of voting for individual candidates that may delay the ascertaining of the final election outcome are ruled out. The use of modern technology should, however, make this problem relatively easy to solve. One may even wonder how important a matter of principle it is that the outcome is clear on election night itself.

The Committee puts forward a range of critical views in relation to Finland which were also characteristic of the general debate. Americanisation, i.e. gimmicky electoral campaigns which "favour individuals who know how to handle the mass media" (SOU 1993:21, p. 39), was considered to be one disadvantage. It is here that the Committee entered the "celebrity" argument: candidates who have become well-known owing to factors other than their political merits are said to be advantaged by the Finnish system of preferential voting. Second, the system is considered to involve a greater risk that external financial interests can affect the outcome of the election, as for the most part campaign financing

takes the form of contributions to individual candidates. Third, the system is considered to lead to personal conflicts between candidates within one and the same party.

The celebrity argument suggests that not just the campaigns but also many of the candidates are less "serious" in the Finnish system. This is frequently the first thing mentioned when the system is discussed in Sweden. It is mentioned no less frequently in Finland in a critical spirit, though usually by way of a joke. In practice this is a marginal phenomenon, despite the fact that the media meticulously tally up "the celebrity candidates" of the parties prior to each election.[6] The parties are actually wise enough not to put up too many celebrity candidates, as this could easily be seen as a lack of seriousness.

Open conflicts between candidates for the same party are also rare. The system actually encourages collaboration in order to increase the total number of votes cast for a party list, as that is what everyone's chances are primarily dependent on. Moreover, it should not be forgotten that a system in which the candidates chances of being elected are decided by the party through the place it allots the candidate on its list involves major potential conflicts between the candidates in the nomination phase. Such conflicts are by no means unknown in Sweden and Norway, for example, though the parties are often able to ensure that they are played out behind the scenes. From the point of view of the individual candidate, a system that provides only a few winnable seats is quite a different sort of *zero-sum-game* than a system in which voting is exclusively for individual candidates.

On the other hand, the argument against "dirty money" is harder to refute, despite the fact that research faces a problem in this area. It is, however, likely to be more difficult to monitor the financing of an election campaign channelled via the candidates support groups than money which is allocated centrally by party headquarters.

[6] 18 (0.9 per cent) of the total of 2,083 candidates who stood in the 1995 parliamentary election in Finland were of the kind who had become national figures through television, sport or entertainment in the broad sense. Three "celebrities" were elected, all of them were former sportsmen, with wide-ranging political experience. We are grateful to Kimmo Grönlund, of the Department of Political Science at Åbo Akademi, for help in finding these details.

Somewhat different perspectives on the foreign models were put forward in the debate both prior to the release of the report of the Committee on Preferential Voting and subsequently. Typically, the Danish and Belgian systems, which were in fact closest to the proposals of the Committee, did not feature particularly prominently in the debate. This serves once more to underline the fact that the compromise that was arrived at had few active champions. Before the Committee was appointed, a number of parliamentary motions were moved including a Conservative motion whose first signatory was that party's leader, Carl Bildt, in which the advantages of the German model were strongly emphasised (motion 1990/91:K230). A Liberal motion with Bengt Westerberg at its head argued for preferential voting according to the Finnish model (motion 1990/91:K205). Bertil Fiskesjö together with other Centre Party members argued for a facultative form of preferential voting along the Belgian or Danish lines (motion 1989/90: K230).

Other systems were also aired in the newspaper debate; it was here, for example, that a discussion took place on majority elections in single-member constituencies. A keen proponent of this "British" system was Professor Wilhelm Engström of Uppsala. In his view the system would force the candidates out into the field in a totally different way to the proposed arrangements.

> ... the strength of the British model is that it provides the electorate with entirely different opportunities to hold a knife to the throats of their elected representatives (Svenska Dagbladet 7 Aug. and 18 Aug. 1998).

The system which figured most frequently in the debate was, however, the Finnish. Fiskesjö had joined its proponents. He had prepared thoroughly for his mission and his preparations included visiting Finland in order to study the system. His conclusion was that it was "difficult to find an objection to the proposition that Finland has the simplest and most democratic system in the world (Svenska Dagbladet 11 Aug. 1998).

The critical voices were nevertheless considerably more numerous:

> Finland, where the election campaign deals largely with qualities of the candidates that have no real political significance. Celebrity status from the sporting world, for example, is deemed meritorious (Göteborgs-Posten 17 May 1996)
>
> ... successful sports practitioners, actors and television-celebrities have been able to achieve high political office simply because they are celebrities (Arbetet Nyheter 11 Jan. 1998).
>
> In Finland there are unfortunately many examples of the fact that a system of voting for individual candidates can lead to undesirable economic ties (Sören Thun, Arbetarbladet 22 Feb. 1993).

The criticism of the Finnish model followed the same lines as were found in the report of the Committee on Preferential Voting. The report was, however, considerably more cautious in its statements, while the newspaper debate created a picture of Finnish elections as one long celebrity stunt. The arguments that have already been seen to be exaggerated were to occur here in an even more dramatic form.

As a whole, the discussion of foreign models for voting for individual candidates was wide-ranging and lively. The Committee's treatment of the Irish and Finnish versions was, however, obviously conditioned by political expediency. The conclusions were further exaggerated in the broader debate. Strictly speaking, what was lacking in that debate were active champions of the foreign models which lay closest to the Swedish compromise and this is also the reason why a particular vacuum arose on the very point at which the debate ought to have been at its liveliest.

Money and Voting for Individual Candidates

The issue of election finances and the opportunities for powerful economic interests to influence politics as a result of a system of preferential voting was not only one of the key critical points when foreign models were examined and debated. It was also one of the most important issues in the wider debate.

It was stated above that monitoring of the flow of money is made more difficult if election financing occurs primarily via the candidates' support groups, as happens in Finland and Japan for example, than if funds are allocated centrally by the party headquarters. This makes it possible for external interests to gain a hearing in the political sphere by financing individual candidates. Anyone with powerful economic resources can thus achieve a disproportionate influence over politics.

Concerns over increased "financial power" in politics were frequently put forward as an argument against preferential voting. It goes without saying that it was commentators who were critical of the reform who expressed this concern, and that the argument was mainly to be found among those commentators on the left rather than among nonsocialist circles. The Social Democrat MPs, Carina Moberg and Lars Stjernkvist, summarised the problem concisely:

> Anyone who has accepted a contribution from the local large company can scarcely retain his or her credibility when asserting that he or she remains loyal to her principles. When politicians start risking their own money we can obviously no longer assert that all votes carry equal weight (Aftonbladet 24 Nov. 1997).

Many more examples of this line of argument can easily be found, but there is no need at this point. The rest of the argument on the part of the two Social Democrats, who were in no way opposed to voting for individual candidates, is namely at least as interesting. They see voting for individual candidates as an opportunity to require the parties to be made financially accountable, something they have hitherto rejected. This would provide a chance to sweep away "any suspicion that anyone other than the party's members determine which way the party is heading".[7]

The fact that election and party financing, with or without voting for individual candidates, is a problematic subject was vigorously asserted by the writer and political scientist, Stig-Björn Ljunggren. In his view the parties were already economically dependent on the outside world to an inappropriate degree and preferential voting would not make a lot of difference either way.

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[7] Similar proposals have been put forward by researchers; see Åsard and Bennett, p. 195 f.

> Currently the political system not only allows an unjust measure of financial support for the established parties, it is also full of ties between special interests with money and the political parties. Anyone concerned that voting for individual candidates would make this worse should therefore try to get to the root of the problem by restructuring the foundation of the entire party establishment (Sydsvenska Dagbladet 6 Mar. 1994).

> ... the major economic relationship in Swedish politics is the one between the parties and the state.
>
> The state has purchased the means the citizens use to exert democratic influence. Our parties, which were once governed by the members, have become electoral organisations, financed by the state and thus part of the public sector. The party system has been nationalised. This is a real problem from the point of view of democracy (Svenska Dagbladet 17 Aug. 1998).

The debate brought out a wide spectrum of problems linked to the issue of the finances of the parties. Preferential voting involves a decentralisation of campaign financing and thus makes centralised monitoring more difficult. It can also place candidates in radically unequal positions. However, financing involves not only a problem of supervision but also a problem of openness; it is on this point that Swedish parties have been restrictive up until now. Finally the external dependence of the parties, on the state and on other actors as well, merits a thorough investigation.

Conclusions

The most enthusiastic proponents of preferential voting emphasised the strengthening of links between the voters and elected representatives, a revitalisation of politics in general and electoral campaigns in particular and an increased interest in politics on the part of the voters. These arguments went relatively unchallenged.

The opponents most frequently referred to politics being made superficial, to its Americanisation, in the wake of preferential

voting; the focus of political dialogue would slip from factual issues to individuals. Expressions of concern at financially powerful circles being able to exploit preferential voting were also relatively widely expressed.

Currently there would seem to be a significant split in Swedish politics concerning the views taken of the issue of representation. In official publications, the collective right of representation of the parties is emphasised as an absolutely key matter. This viewpoint has few adherents in the wider public debate, whereas a vocal chorus of commentators criticise the monopoly of the party central offices over Swedish democracy. The alternative that is put forward lays primary emphasis on the bond of trust between voters and elected representatives. It is worth noting that this viewpoint is not infrequently put forward by current or former MPs. It is of course to be expected that MPs who have been frustrated by party discipline would promote this view. The breadth of support for this line of debate is nevertheless striking.

Equally striking is the fact that what is often said to be the characteristic feature of Swedish politics, the emphasis on the common interest, is so indistinctly articulated in the debate. While there was discussion of potential political instability in the wake of the reform to introduce preferential voting, a clear debate front which underlined the need to safeguard the functioning of the political system as a whole can barely be discerned. A vacuum is to be found in the debate primarily around the hard core issues of parliamentary government, the formation of governments and coalitions. Of the three main ingredients in our definition of democracy, it is effective government that has to play Cinderella at this ball.

This is largely a consequence of the fact that the political parties have washed their hands, in both senses, of the reform to introduce preferential voting. The Swedish model of preferential voting is the outcome of a compromise for which none of the parties feels any great enthusiasm. Voting for individual candidates has become a sort of non-issue within the parties. The parties have arranged their rankings of candidates and simultaneously the law now makes it possible for individual candidates to break with those rankings. Only the Greens and the Left Party have sought to any clearly defined extent to deter candidates and voters from

individual election campaigns and voting for individuals. The relationship of the parties to the reform has meant that those who are normally expected to articulate the common interest are keeping as low a profile as possible.

A predominant Swedish view of preferential voting or of the significance of elections in representative democracy as a whole can scarcely therefore be said to exist. On this point the democracy debate finds itself in nomansland, and foreign models have little to offer as long as both the most important goals and the ways in which the problems are set out remain as diffuse as they currently are.

Unfortunately, statistical data concerning voting for individual candidates fail to provide any clear guidance for future politicians. In the parliamentary elections of 1998, barely thirty per cent of the voters cast their votes for individual candidates. The proportion was large enough to deter any attempts to get rid of the system, but not so great as to provide the reform with any significant measure of legitimacy. Twenty-five per cent of the MPs in the new parliament were elected on the basis of votes cast for individual candidates, but only twelve of them would fail to have been elected if the rankings set by the parties had been the sole deciding factor. The net effect of preferential voting on the composition of parliament was therefore only three per cent.

It would be wrong to assert that the transition to optional preference voting was a reform in name only, even though the new system labours under the burden of ambiguity and a lack of clarity. It is rather that the parties' attempts to deal with the issue of voting for individual candidates appear to be cosmetic. The clarion call lacked clarity and as a result so do the debate and the reaction of voters.

It is too early for a thorough assessment of the system of preferential voting in Sweden and nor has this been the primary aim of this study. Even if the debate has something to tell us about the expectations of Swedes in relation to the electoral system, and even if these expectations will have an effect on Swedish politics in the future, it is difficult to find arguments for this particular system. It is entirely possible that the compromise will continue to strip the electoral system of its effective aspects without

achieving the positive effects that were invoked in support of the reform.

The key problems in Swedish democracy can be approached from two different directions. In neither case does the current model of preferential voting appear to provide the obvious solution.

The first perspective considers clarity in relation to the alternatives as the key to both effectiveness and legitimacy. Above all, elections should offer the voters a clear choice between alternative governments. Prior to the elections the parties should be forced to give clear undertakings on cooperation with other parties during the coming electoral term; for the sake of their credibility, the undertakings must be realistic both in terms of a measure of agreement on key issues and in relation to the parliamentary weight of the cooperation.

The alternatives in Swedish politics have become less clear because of the larger number of parties represented in parliament, the weakening of the bloc alignments and the greater degree of opinion fragmentation within the parties, primarily within Social Democracy. A greater number of coalition partners are required to achieve majorities while the parties are forced to articulate their viewpoints with ever greater vagueness. As a result, interest and confidence in the parties is falling and the legitimacy of politics is declining.

If clear alternatives in the formation of governments are considered to be the key factor, *fewer and not more* actors in Swedish politics is probably desirable. The number of parties and the degree of party factionalisation are a problem even now. This can only get worse if individual candidates and MPs start to acquire greater recognition by virtue of a high number of votes cast for them as individuals.

This would all seem to argue for an electoral system which restricts further fragmentation of the party system and makes it easier to maintain cohesion within the parties. This could be used in principle as an argument for majority elections (which have been proposed) but this is not a realistic scenario in a multi-party system such as Sweden's. On the other hand, it is highly appropriate to argue on the basis of this perspective for a return to the old

system of voting for parties and the centralised control of party discipline.

The other perspective is based on the premise that it is changes in the composition of the electorate that are the primary cause of the decline in participation and confidence. Politics and parties are based on collective conflicts which date from a previous stage of Swedish history. Reference to clear alternatives is meaningless if they are provided by parties with which the citizens can no longer identify. The collectivist phase in Swedish social life has given way to an individualist epoch. Interest and trust in politics can only be restored if the voters are offered something to identify with, and it is here that the parties no longer suffice on their own. A vote for an individual candidate which turns the voters into sovereign decision-makers in relation to the cast of characters of parliamentary government is a tool with which politics can be brought back into greater proximity to the voter in a period when the parties are no longer seen as being relevant.

In order for a vote for an individual candidate to have such a revitalising effect the electoral system must, however, be unambiguous. The voters have to know exactly what they are voting for when they vote. The system should treat all voters alike and it is in this respect that a degree of ambiguity attaches to the current system of preferential voting. The remedy can then only be compulsory voting for individual candidates within the framework of party lists.

It is difficult to decide which of the perspectives has the better arguments behind it. It is clear that neither of them is entirely right, nor is either entirely wrong. Putting them forward as equivalent alternatives, each one better than the current system, is neither cowardly nor contradictory. They have namely a common and, in a constitutional context, indispensable ingredient: clarity. They do not leave the voters lost and uncertain as to what they are actually voting for.

Our conclusion is thus that government and parliament should reconsider either a return to the old electoral system or a further development of voting for individual candidates to include compulsory preference voting within the framework of party lists.

6 Developing Swedish Democracy

Democracy is a composite ideal. While the principle of the sovereignty of the people, the idea that all human beings are of equal worth and that everyone is entitled to take part in the making of decisions that affect the future of society, lies at its core, a democratic form of government has to meet more requirements than the principle of the rule of the majority. Constitutional government protects minorities and individuals and establishes the key playing rules in a democracy; it also exists to defend freedom of expression. Representative democracy must also be served by elected delegates who can make decisions as well as competent administrators who prepare and execute these decisions.

Two reflections arise out of a survey of the worlds democracies. First, the observer is struck by the variations that exist and second, by the variability.

No democratic state is quite like any other. Different countries have chosen a variety of models for electoral systems, the representation of the people, the executive branch, territorial autonomy, legal systems and all the other institutions that together make up the workings of a democracy. The greater the variation, the greater the problems in finding a single yardstick, a marking system, with which to provide an overall verdict on how well a democracy functions. In international terms, Sweden would appear to be a relatively well-functioning democracy in relation to certain aspects of its form of government. The principle of public access, the tradition of local self-government and, after all is said and done, the high level of participation by the citizens in social life show some of the brighter sides of Swedish democracy. The comparison with other countries also makes clear, however, that Swedish democracy works rather poorly in other respects. Our

report has provided a number of examples; this final chapter summarises the results and points out some means which might help to take Swedish democracy forward.

All democratic states are subject to change. Democracy may be considered as an ongoing experiment; the ideas of the democratic polity have now been tested for a century on a national scale. The old established democracies have all made the same discovery. The institutions of democracy are not fixed once and for all. Time after time, democracy is forced to reform its own workings in tandem with changes occurring in society. Many democracies are currently involved in constitutional debate and institutional reforms. It has frequently been pointed out that democracy is a system which has the ability both to criticise and improve itself. This makes it possible to refer to a democratisation of the democracies. In Sweden, too, problems of democracy are attracting increasing attention, although the Swedish debate on constitutional issues is proving far from adequate.

Although this report by no means constitutes an exhaustive survey, the preceding chapters make clear that democracy in Sweden is confronted with several kinds of problems. The particular nature of certain aspects of the Swedish system has a powerful historical, institutional and legal foundation. Other problems are of a more contemporary kind. In consequence, the historical roots of the needs for reform highlighted in the various chapters are of different length. However, there are a number of important points at which they intersect.

The Need for Constitutional Reforms is Greatest within the EU

Constitutional engineering can be seen at work in several different kinds of proposals for constitutional change. Chapter 2 presents several of the main themes in the current constitutional debate in Europe. The conclusion drawn is that Sweden has no pressing need for comprehensive constitutional reform.

It is true that the current Instrument of Government has its shortcomings; its twenty-five year history has made clear that it

should have been designed differently. There are, however, neither good reasons nor any necessity to initiate a total revision of the constitution.

Several minor reforms to the Swedish parliamentary system may be contemplated, an even longer term of office for example, a lesser degree of proportionality in the electoral system, raising the electoral threshold against small parties and an altered role for the Speaker in the formation of governments. The need for such alterations is, however, not pressing.

Many European countries are in the process of decentralising; there are several different ways to increase regional autonomy. Self-government at the local and regional levels needs to be more clearly regulated, although full-fledged federalism is not suitable for a country such as Sweden.

The electoral system has been reformed in a good many European democracies, but the effects of the changes are complicated to assess. The lessons for Sweden consist primarily in a greater level of awareness about what experiments to avoid.

A greater number of the elements of direct democracy, mainly in the form of popular referendums, are often put forward as a means to increase democracy. However, the evidence is very mixed and difficult to assess. In practice, popular referendums often become a weapon in the hands of the political elite.

In European terms, Sweden appears to be a constitutionally under-developed country. Since its monarchy was less repressive, Sweden developed into a form of *Gesetzesstaat*, but was never forced to develop a more extensive *Rechtsstaat*. Sweden is now being obliged to respond to the Continental system of the legal protection of rights. Constitutional government means that the rights of citizens are safeguarded by independent institutions.

The need for constitutional reforms has arisen primarily out of membership of the EU. National policies are to an ever increasing extent being determined at the European level. Europeanisation affects every aspect of public life in Sweden, although from the point of view of democracy it is the concerns that the Riksdag is being marginalised that should bring about a debate on constitutional policy.

As a member country, Sweden also has a responsibility for the

future of the Union. Seen from the perspective of constitutional democracy, the EU currently suffers from major shortcomings. One way of solving these problems would be to provide the EU with a constitution in the proper sense of the word. Although the EU is still founded on intergovernmental treaties, the Union has now acquired such power and significance for the individual citizen that clarification of the constitutional system is required. A constitution for the EU should formulate the fundamental principles of European cooperation, it should establish the rights and freedoms of citizens and define the responsibilities of the Union's institutions. Sweden's voice is still not making itself heard in this European constitutional debate.

In the foreseeable future, European cooperation will be made up of a combination of intergovernmental and supragovernmental elements. Within specific areas the member countries will retain their own decision-making rights, while certain aspects of policy may come to be implemented at odds with the will of a country. The power balance between the EU and the member countries is not constant but shifts depending on the circumstances, above all the actions of the individual country.

Sweden has to design her democratic system so as to constitute a major player in the European arena. An independent Bank of Sweden will be able to look after national interests. A constitutional court would be able to develop and defend those constitutional principles that lie at the heart of Swedish legal culture. If Swedish courts do not themselves prove capable of asserting fundamental legal principles, judicial power is increasingly at risk of being transferred to the courts in Strasbourg and Luxembourg.

Sweden Can Become a Better Constitutional Democracy

Constitutional government is not in contradiction with popular and effective government. On the contrary, a properly functioning democracy requires ordered and effective forms for the embodiment of the will of the people.

In a speech to President Nelson Mandela, Swedish Prime Minister Göran Persson restated the words Mandela uttered on leaving captivity: "The task before us is to still the fears of the minority while meeting the aspirations of the majority." The combination of the rule of law and government by the people that is constitutional democracy could not have been better put.

To reiterate the theme developed in chapter 3, democracy has to be something more than simply a state in which the majority governs through legislation. Constitutional government also imposes the requirements of due process, human rights and freedoms and the separation of powers.

There are two different ways of considering a constitution. In the terms of the first, the constitution is simply descriptive; it records the current division of power and the expressions of the will of the majority. The second view of the constitution emphasises its normative character. The constitution embodies a number of fundamental legal principles concerning public power and the relationship between the common good and the individual. The principles of the constitution do not become a reality until it is invoked and seen as binding by the various actors in society.

The question whether Sweden should have a constitutional court has thus been put incorrectly. One has first to decide whether a constitution—in the normative sense—is desirable at all. Sweden needs to hold a debate about what it means to live in a constitutional democracy.

A state governed by the rule of law should have a procedure for determining whether laws and regulations are in agreement with the constitution. Currently Swedish courts have a right enshrined in the constitution, as well as the obligation, not to apply legislation which is in conflict with the constitution. In this respect Sweden forms part of the system currently prevalent in the European democracies.

In Sweden, the right to judicial review is nevertheless restricted in one crucial respect. The courts may only refuse to implement a provision decided by parliament or the government if "the error is manifest". In relation to parliament, this limitation is grounded in a legitimate effort to find an appropriate balance between the popularly-elected legislative assembly and the power of the judi-

ciary. What is remarkable, however, is that the government also enjoys this constitutional protection.

Paradoxically, the administrative courts in Sweden are both too weak and too powerful. Swedish courts were long prevented from reviewing government decisions. This has meant the courts have what is, in European terms, an abnormally weak position in public life. In contrast, Swedish courts have a power their European counterparts generally lack. In Sweden appeals on administrative matters may be heard as a rule not only with reference to the legality of the decisions but also to their reasonableness. Moreover, Swedish courts have the power not only to quash a decision but also to change its material content.

Having lost a number of cases in the European Court of Human Rights, Sweden has now introduced a system of judicial review enabling the Supreme Administrative Court to quash decisions made by the government to the extent that they are in conflict with a legal norm by which the government is bound. This power of scrutiny gives the courts an important though limited role. Issues of reasonableness are best dealt with where they rightly belong in a democratic society: within politically accountable bodies, not in independent courts of law. Accordingly, this model of judicial review should be extended to all parts of the public sector. Swedish courts would then gain powers which are in accord with the norm for constitutional democracies.

Sweden has a unique and historically determined model for the organisation of the central public administration. In contrast with the enormous ministries of the Continental states, Sweden has comparatively small government departments. The major part of the work of the central administration is the province of autonomous administrative agencies.

Sweden should nurture and develop this model of autonomous administrative authorities according to which the government should control the administration by legislation and regulation, not by intervening on individual issues. Informal arrangements risk undermining the potential of the Swedish model for a clear division and the correct linkage between power and responsibility.

The concept of *styrning* (control, rule) is key to the Swedish understanding of the nature of political power. The introductory

chapter of the Instrument of Government makes clear that it is the task of the government to rule the country. What is seldom attended to is the fact that political rule may be exercised in different ways. The idea of constitutional democracy implies that elected politicians normally rule through norms; the task of interpreting and applying legal norms is, in contrast, the responsibility of the courts and the administrative agencies.

Ruling through general norms does not mean diminished but increased effectiveness. Linking rule to legal norms is not in contradiction with popular government; on the contrary, it is the highest expression of the popular will.

Sweden Lacks a European Public Sphere

The fact that both parts of the concept of constitutional democracy help to determine each other is clearly demonstrated by the European Union. The EU suffers from shortcomings both as regards constitutional matters and in terms of democracy. As was previously pointed out, the EU lacks a true constitution. The EU also clearly falls short in relation to government by the people.

Various actors have to shoulder responsibility for this inauspicious situation, but a particular responsibility rests with the European Parliament. The members of that parliament have been directly elected by the people of the member countries for the last twenty years. Through the European Parliament, representatives of different parts of the Union population are in a position to come together to discuss the future of Europe, principally its institutional arrangements. A European public sphere, a forum for an ongoing dialogue on European issues, is necessary in order to provide some measure of popular support for this debate. Chapter 4 analyses the European public sphere in Sweden.

All the member countries face problems in getting a meaningful debate going, which will engage the attention of the public. There is nothing to suggest that Sweden is worse than the European average, but there are grounds to be particularly disappointed since this country's ideals are set so high. Sweden has a long tradition of public access, popular education and study circles.

The absence of a functioning European public sphere is therefore all the more keenly felt.

Responsibility for the shortcomings of the European debate in Sweden lies in several hands. Flaws in EU-institutions, the Riksdag and the mass media augment one another. The absence of political leadership has also left its mark. Democracy cannot be reduced to an apparatus for registering current opinion. Representative democracy presumes an active interplay between the voters and those elected to office. Elected representatives need not only to listen, they also have to argue actively for their own point of view. Leading Swedish politicians, in the governing party above all, have failed in this task as regards the European issue.

Sweden's official attitude in relation to economic and monetary union is to wait and see. Before Sweden can join EMU, the matter must be put to the people for their decision. This could take place in a general election, but the possibility cannot be excluded that it will occur instead by means of an extraordinary election or a popular referendum.

The issue of whether Sweden should enter the currency union could, of course, be resolved by referendum; the alternatives for and against are sufficiently clear. However, the risk exists of increasing confrontation and of an ossification of viewpoints in relation to Sweden's attitude to EU. A powerful argument for allowing the issue to be resolved in a scheduled parliamentary election is that the political parties would be forced to take responsibility. A key condition would be for European issues to be placed high up on the political agenda.

Sweden has great problems in developing its national debating culture so as to include a European discussion characterised by reciprocity, objectivity and continuity. There is therefore good reason to assert that Sweden, as a member country, demonstrates a democratic deficit in its manner of discussing the EU.

Improving the workings of a forum for European debate is of central importance not only in relation to the EU issue in the narrow sense, but also for the workings of Swedish democracy as a whole. The feeling of alienation from the EU which many Swedes experience risks leading to a general crisis of confidence in Swedish democracy.

Democratic government is currently being realised in parallel on several levels. The risk exists that public power will become so comprehensive and so all-pervading that scrutiny and accountability will be difficult to pursue. Democracy requires a clear separation of powers and institutional links between the levels.

The Swedish MEPs are at risk of becoming a group of professional politicians who are cut off from the mainstream Swedish debate, shuttling continuously between Sweden, Strasbourg and Brussels. The Riksdag has failed to meet its responsibility to mediate the experience of Sweden's MEPs so as to form part of the national decision-making process.

Preferential Voting—a Half-Measure that Failed

When Sweden finally introduced a greater measure of voting for individual candidates, the result was a compromise. The option of putting a cross beside the name of a candidate and not a party had limited impact, both because the electoral threshold was set at a relatively high level and because the political parties acted to stop individual campaigns developing that were too independent.

While the electoral system that was previously in force could be accused of only providing extremely marginal possibilities of voting for individuals, it nevertheless had the advantages of being straightforward, simple and easy to understand.

Sweden has abandoned the advantages of the old electoral system. Instead she has gained all the disadvantages of preferential voting with none of the advantages, which is the worst of all possible worlds. One alternative now is to return to the old system, another would be to take the plunge and introduce a system based exclusively on compulsory voting for individual candidates.

The Swedish debate on preferential voting, which was described in chapter 5, is revealing in a number of respects. The traditional view of democracy has a collectivist bias. The official view is that political activity is exercised primarily through the political parties. The representatives of the parties never really took any active part in the debate and proved unwilling, in prac-

tice, to allow an element of greater individuality to become part of representative democracy.

The public debate is very closed in a number of respects. The silence of the political parties on the debate concerning them is deafening. Sweden deserves a livelier debate about the meaning and future of representative democracy.

Another lesson to be drawn from the debate on preferential voting is that compromise is not the answer to every issue. While the negotiating culture of the Swedish model has had its advantages within other sectors of political decision-making, the spirit of compromise is proving to have serious disadvantages on constitutional issues.

The Swedish debate on the constitution is flimsy and erratic. Awareness of the arguments of principle in relation to the constitution appears to be poorly developed. Not enough use has been made of the lessons to be drawn from other democracies. The capacity for renewal of Swedish democracy has been diminished in consequence.

Where is Sweden Currently Heading?

A survey of constitutional politics across Europe and, even more significantly, the discussion of constitutional government in Sweden has helped to focus the spotlight on those circumstances in which the monarchist-collectivist inheritance of Swedish politics is clearly reflected. Like England, Sweden lacks a tradition of the separation of powers. Historical developments have brought about a special emphasis on collective rights and, as a result, the struggle for social power in Sweden became less of a struggle for the right to "life, limb and personal liberty". Instead, Swedish history manifests a pattern of development in which an increasing number of ever broader collectives are incorporated into the governance of the state. The road from the Parliament of the Estates to collaboration between the classes is actually not particularly long.

By definition, a constitution means an enactment which regulates the *allocation, exercise* and *limitations* of power. The histori-

cal background makes clear why the first two components have gained a more powerful position in Swedish constitutional thinking than the third. The requirement imposed by constitutional government that executive power be clearly demarcated and legally regulated has had little impact on the Swedish democratic tradition.

The Swedish people long had more powerful links to politics and parties than was common in Western Europe. The links between parties and their electorates were stable, participation in politics was broader and confidence in the system higher than in the rest of Western Europe. The decline in turnout, party loyalty and political confidence is all the more marked in Sweden. Broadly speaking the political parties remain the same as before, their electoral support is, however, becoming narrower and more diffuse.

A common assertion is that the voters no longer recognise the parties. The problem is rather that the voters recognise the parties all too well. The current situation is that the parties are facing an electorate that is becoming increasingly difficult to recognise.

The opinion-forming role of the parties has been complicated as a result. The party system has become more fragmented, which has also reduced the freedom of manoeuvre of politicians in coalition politics. Positions that are too clearly defined can have a negative effect on the flexibility required to form coalitions. Moreover, contemporary conflicts are proving increasingly less compatible with the party boundaries; internal fragmentation is on the increase. The more the parties are split internally, the less clearly their voices are articulated in the process of opinion formation. European policy and the reform to introduce preferential voting provide examples of this development.

All the chapters of this report bear witness to a trend which is growing increasingly more pronounced over time: the relationship between the collective and the individual is changing. A major European research project makes clear that the population is developing a new relationship to politics. Citizens are better informed, more engaged and more active. At the same time they are becoming more individualistic, self-centred and focused on narrow matters of interest. Traditional collective movements,

such as parties, trade unions and churches, are finding it increasingly difficult to make any impact (Kaase & Newton 1995).

Both the ever more diffuse boundaries between groups in the Swedish population and the increasingly powerful international pressure for a more effective monitoring of the rights of the individual versus the executive form part of this development. In future the tasks faced by constitutional government will become increasingly more important.

Sweden is out of step with constitutional developments in Europe. There are historical reasons for the fact that the country is lagging behind. Mass democracy was introduced in Sweden without revolutions or other catastrophic breaks with the past. Popular government was introduced within the framework of old institutions. Only now, and partly under the pressure of European integration, is Sweden being forced to take a stand in relation to the problems of principle of constitutional democracy.

Our recommendation is not that Sweden should adapt itself on every point to a model based on some European norm, which can hardly be said to exist in reality. On certain points, such as the principle of public access and the model of autonomous administrative agencies, it is in fact the rest of Europe that has lessons to learn from Sweden. But there are many parts of the Swedish polity which could be changed so as to improve democracy. In this report, we have paid particular attention to the relationship between the EU and the national state, that between the law and politics, the European public sphere and the revealing perspective on the political parties offered by the debate on preferential voting.

The constitutional debate in Sweden suffers from a lack of awareness both about the country's historical traditions and the constitutional changes that have taken place in other democracies. This has meant that the debate has taken on much too defensive a character. Greater awareness about Sweden's past and about her nearest neighbours would provide the country with a better basis on which to conduct a critical and creative debate aimed at finding ways of improving democratic institutions.

The SNS Democratic Audit 1999

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Bibliography

Algotsson, Karl-Göran 1987. *Medborgarrätten och regeringsformen. Debatten om grundläggande fri- och rättigheter i regeringsformen under 1970-talet.* Norstedts, Stockholm.

Allern, Sigurd 1996. *Kildenes makt.* Pax, Oslo.

Andersen, Sven S. and Kjell A. Eliassen, eds. 1993. *Making Policy in Europe. The Europeanisation of National Policy-Making.* Sage, London.

Andersson, Christian and Rutger Lindahl 1994. *Europaparlamentet. EG:s demokratiska ansikte.* SNS Förlag, Stockholm.

Anton, Thomas J. 1980. *Administered Politics. Elite Political Culture in Sweden.* Nijhoff, Boston.

Back, Pär-Erik and Gunnar Fredriksson 1966. *Republiken Sverige.* Bonniers, Stockholm.

Bartolini, Stefano and Roberto D'Alimonte, eds. 1995. *Maggioritario ma non troppo.* Il Mulino, Bologna.

Batt, Helge-Lothar 1996. *Die Grundgesetzreform nach der deutschen Einheit.* Leske & Budrich, Opladen.

Bengtsson, Bertil 1998. "Den svenska grundlagen och domstolarna", *Jussens Venner*, 33, 1–2, Oslo.

Beratungen und Empfehlungen zur Verfassungsreform 1976, 2. Bund und Länder. Deutscher Bundestag, Bonn.

Beretta, Paolo 1985. "Il referendum abrogativo negli sviluppi della pressi", *Quaderni costituzionali*, 5, 2, 367–392.

Bernitz, Ulf, Sverker Gustavsson and Lars Oxelheim, eds. 1998. *Europaperspektiv.* Årsbok för Europaforskning inom ekonomi, juridik och statskunskap. Nerenius & Santérus Förlag, Stockholm.

von Beyme, Klaus 1968. *Die verfassunggebende Gewalt des Volkes.* Mohr, Tübingen.

von Beyme, Klaus 1987. *America as a Model.* St. Martin's, New York.

von Beyme, Klaus 1996. *Transition to Democracy in Eastern Europe.* Macmillan, Basingstoke.

von Beyme, Klaus 1998. *The Legislator. German Parliament as a Centre of Decision-making.* Ashgate, Aldershot.

Birgersson, Bengt Owe and Jörgen Westerståhl 1986. *Den svenska folkstyrelsen.* 4:th ed., Liber Förlag, Stockholm.

Bobbio, Norberto 1984. *Il futuro della democrazia.* Einaudi, Turin.

Bogdanor, Vernon 1981. *The People and the Party System. The Referendum and Electoral Reform in British Politics.* Cambridge University Press , Cambridge.

Bogdanor, Vernon, ed. 1985. *Representatives of the People? Parliamentarians and Constituents in Western Democracies.* Gower, Aldershot.

Bogdanor, Vernon 1997. *Power and the People. A Guide to Constitutional Reform.* Victor Gollancz, London.

Brothén, Martin, Peter Esaiasson and Sören Holmberg 1997. *Europaparlamentsval 1995. EU-kandidater i fokus.* Statsvetenskapliga institutionen, Göteborgs universitet.

Butler, David and Austin Ranney, eds. 1978. *Referendums. A Comparative Study in Practice and Theory.* American Enterprise Institute, Washington.

Caciagli, Mario and Pier Vincenzco Uleri, eds. 1994. *Democrazie e referendum.* Laterza, Bari.

Commissione parlamentare per le riforme costituzionali. Comitato forma di governo, seduta di martedi 18. marzo 1997. Audizione del professore emirito... Giovanni Sartori.

Crick, Bernard 1962. *In Defence of Politics.* Weidenfeld and Nicolson, London.

Danelius, Hans 1997. *Mänskliga rättigheter i europeisk praxis.* Norstedts Juridik, Stockholm.

Eckhoff, Torstein and Eivind Smith 1997. *Forvaltningsrett*, 6 uppl., Tano Aschehoug, Oslo.

Einhorn, Eric S. and John Logue 1998. "Restraining governors. The Nordic experience

with limiting the strong state", *Scandinavian Political Studies*, 21, 45–67.
Eklund, Jörgen and Martin Ådahl 1998. *Vad betyder EMU?* SNS Förlag, Stockholm.
Elster, Jon 1988. "Arguments for constitutional choice: reflections on the transition to socialism", in Jon Elster & Rune Slagstad 1988.
Elster, Jon and Rune Slagstad, eds. 1988. *Constitutionalism and Democracy*. Cambridge University Press, Cambridge.
Elster, Jon 1995. "Limiting majority rule. Alternatives to judicial review in the revolutionary epoch", in Smith 1995a.
Elvander, Nils 1998. "EU måste bli en förbundsstat." *Dagens Nyheter*, 28 Dec. 1998.
Esaiasson, Peter and Sören Holmberg 1996. *Representation from Above. Members of Parliament and Representative Democracy in Sweden*. Dartmouth, Aldershot.
Esping, Hans 1994. *Ramlagar i förvaltningspolitiken*. SNS Förlag, Stockholm.
Falter, Jürgen 1991. *Hitlers Wähler*. Beck, München.
Favoreu, Louis 1996. *Les cours constitutionnelles*, 3:rd ed. Presses Universitaires de France, Que sais-je?, Paris.
Fenner, Christian 1998. *Parteiensystem und Politische Kultur. Schweden in vergleichender Perspektive*. Nomos, Baden-Baden.
Freund, Norbert 1995. "Wahlsystemreform in Italien", *Jahrbuch für Politik*, 5. Nomos, Baden-Baden.
Gerhards, Jürgen 1993. "Westeuropäische Integration und die Schwierigkeiten der Entstehung einer europäischen Offentlichkeit", *Zeitschrift für Soziologie*, 22, 96–110.
Gilljam, Mikael 1998. "Personvalet: röstning med fallgropar", *Forskning och framsteg*, 33:6, 27–31.
Grimm, Dieter 1994. *Braucht Europa eine Verfassung*? Carl Friedrich von Siemens-Stiftung, München.
Gustafsson, Gunnel 1989. "Challenges confronting Swedish decision-makers: political and policy responses 1974–1987", in Damgaard, Erik et al., eds. *The Politics of Economic Crisis. Lessons from Western Europe*. Avebury, Aldershot.
Hadenius, Stig 1996. *Svensk politik under 1900-talet. Konflikt och samförstånd*. Rabén Prisma, Stockholm.
Hinnfors, Jonas and Jon Pierre 1998. "The politics of currency crises in Sweden: policy choice in a globalised economy", *West European Politics*, 21, 103–119.
Holmberg, Erik and Nils Stjernquist 1998. *Vår författning*, 11 uppl. Norstedts Juridik, Stockholm.
Holmberg, Sören and Lennart Weibull, eds. 1997. *Opinionssamhället*. SOM-rapport 20. SOM-institutet, Göteborgs universitet.
Holmberg, Sören 1998. "Nuvarande valsystem: minskande personkännedom och få personröster", in Jörgen Westerståhl, ed. *Person och parti*. Studier i anslutning till Personvalskommitténs betänkande Ökat personval. SOU 1993:63.
Holmström, Barry 1998. *Domstolar och demokrati. Den tredje statsmaktens politiska roll i England, Frankrike och Tyskland*. Statsvetenskapliga föreningen, Uppsala universitet.
Ingh, Stephan 1995. "Electoral reform in New Zealand", *The Journal of Legislative Studies,* 1, 76–92.
Jachtenfuchs, Markus and Beate Kohler-Koch, eds. 1996. *Europäische Integration*. Leske & Budrich, Opladen.
Jacobsson, Kerstin 1997. *Så gott som demokrati. Om demokratifrågan i EU-debatten*. Boréa, Umeå.
Jepperson, Roland L. 1991. "Institutions, Institutional Effects and Institutionalism", in Walter W. Powell and Paul J. DiMaggio, eds. *The New Institutionalism in Organizational Analysis*, University of Chicago Press, Chicago.
Jandem, Sven 1998. *Die skandinavischen Wege in die Arbeitslosigkeit*. Leske & Budrich, Opladen.

Johansson, Svante O. and Tommy Möller 1998. "Personval och fri nomineringsrätt: tänkbara effekter av det nya systemet", *Förvaltningsrättslig tidskrift*, 61, 39–63.
Kaase, Max and Kenneth Newton 1995. *Beliefs in Government*. Oxford University Press, Oxford.
Landfried, Christine eds. 1989. *Constitutional Review and Legislation. An International Comparison*. Nomos, Baden-Baden.
Landfried, Christine 1999. *Politische Steuerung in der Europäischen Union*. Nomos Baden-Baden.
Lane, Jan-Erik ed. 1990. *Understanding the Swedish Model*. Frank Cass, London.
Lavin, Rune 1972. *Domstol och administrativ myndighet*. Norstedts, Stockholm.
Lavin, Rune 1989. *Viteslagstiftningen. En kommentar*. Norstedts, Stockholm.
Lavin, Rune 1995. "Ett urval förvaltningsprocessrättsliga problem", *Förvaltningsrättslig Tidskrift*, 58, 137–154.
Lepsius, M. Rainer 1990. "Modernisierungspolitik als Institutionenbildung: Kriterien institutioneller Differenzierung", in Rainer M. Lepsius, *Interessen, Ideen und Institutionen*. Westdeutscher Verlag, Opladen.
Lewin, Leif 1994. "The rise and decline of corporatism: the case of Sweden", *European Journal of Political Research*, 26, 59–79.
Lewin, Leif 1996. *Votera eller förhandla? Om den svenska parlamentarismen*. Norstedts Juridik, Stockholm.
Lewin, Leif 1998. "Majoritarian and consensus democracy: the Swedish experience", *Scandinavian Political Studies*, 21, 195–206.
Lindbeck, Assar 1990. *The Swedish Experience*. Institute for International Economic Studies, Stockholm.
Lipset, Seymour M. and Stein Rokkan eds. 1967. *Party Systems and Voter Alignments. Cross-National Perspectives*. Macmillan, London.
Listhaug, Ola and Matti Wiberg 1995. "Confidence in political and private institutions", in Hans-Dieter Klingemann and Dieter Fuchs, eds. 1995. *Citizens and the State*. Oxford University Press, Oxford.
Luthardt, Wolfgang 1994. *Direkte Demokratie*. Haupt, Bern.
Majone, Giandomenico 1996. "Redistributive und sozialregulative Politik", in Jachtenfuchs and Kohler-Koch 1996.
Marcusson, Lena 1992. "Laglighets- och lämplighetsprövning: en titt i backspegeln och framåt", *Förvaltningsrättslig Tidskrift*, 55, 121–137.
Mattson, Ingvar 1998. *Den statliga budgetprocessen. Rationell rersursfördelning eller meningslös ritual?* SNS Förlag, Stockholm.
Montin, Stig and Ingemar Elander 1995. "Citizenship, consumerism and local government in Sweden", *Scandinavian Political Studies*, 18, 25–51.
Morgan, Roger and Clarie Tame, eds. 1996. *Parliament and Parties*. St. Martin's Press, New York.
Mayntz, Renate and Fritz W. Scharpf, eds. 1995. *Gesellschaftliche Selbstregelung und politische Steuerung*. Campus, Frankfurt a.M.
Nedelmann, Birgitta 1982. *Rentenpolitik in Schweden*. Campus, Frankfurt a.M.
Neidhart, Leonhard 1970. *Plebiszit und pluralitäre Demokratie. Eine Analyse der Funktion des schweizerischen Gesetzesreferendums*. Haupt, Bern.
Nergelius, Joakim 1996. *Konstitutionellt rättighetsskyd. Svensk rätt i ett komparativt perspektiv*. Fritzes, Stockholm.
Nielsen, H. Jørgen 1970. "Voting age of 18 years: adopted by the Danish Folketing, rejected by the popular referendum", *Scandinavian Political Studies*, 5, 301–305.
Panebianco, Angelo 1988. *Political Parties. Organisation and Power*. Cambridge University Press, Cambridge.
Panebianco, Angelo (1994). "Alternanza a rischio regime", *Corriere della Sera*, 24 Jan. 1994.

Petersson, Olof, Jörgen Hermansson, Michele Micheletti and Anders Westholm 1996. *Demokrati och ledarskap. Demokratirådets rapport 1996*. SNS Förlag, Stockholm.
Petersson, Olof, Jörgen Hermansson, Michele Micheletti and Anders Westholm 1997. *Demokrati över gränser. Demokratirådets rapport 1997*. SNS Förlag, Stockholm.
Petersson, Olof, Jörgen Hermansson, Michele Micheletti, Jan Teorell and Anders Westholm 1998. *Demokrati och medborgarskap. Demokratirådets rapport 1998*. SNS Förlag, Stockholm.
Petersson, Olof ed. 1997. *Democracy and Leadership. Report from the Democratic Audit of Sweden 1996*. SNS Förlag, Stockholm.
Petersson, Olof 1999. *Samhällskonsten*. SNS Förlag, Stockholm.
Petrén, Gustaf and Hans Ragnemalm 1980. *Sveriges grundlagar och tillhörande författningar med förklaringar*. Liber, Stockholm.
Pierre, Jon and Anders Widfeldt 1994. "Party organisations in Sweden: Colossuses with feet of clay or flexible pillars of government?", in Richard S. Katz and Peter Mair, eds. *How Parties Organize*. Sage, London.
Pierre, Jon and Anders Widfeldt 1997. "Sweden", *European Journal of Political Research*, 32, 495–500.
Pierre, Jon 1998. "Riksdagsledamöterna i partiarbetet", in Jörgen Westerståhl, ed. *Person och parti*. Studier i anslutning till Personvalskommitténs betänkande Ökat personval. SOU 1993:63.
Pitkin, Hanna F. 1967. *The Concept of Representation*. University of California Press, Berkeley.
Premfors, Rune and Bo Rothstein 1999. "Förbjud SAF-kampanjer om EMU", *Dagens Nyheter*, 11 Jan. 1999.
Premfors, Rune 1990. "The Swedish Model", in Jan-Erik Lane, ed. *Understanding the Swedish Model*. Frank Cass, London.
Rothstein, Bo, Peter Esaiasson, Jörgen Hermansson, Michele Micheletti and Olof Petersson 1995. *Demokrati som dialog. Demokratirådets rapport 1995*. SNS Förlag, Stockholm.
Sartori, Giovanni 1994. *Comparative Constitutional Engineering*. Macmillan, Basingstoke.
Schück, Hermann et al. 1992. *Riksdagen genom tiderna*. Sveriges Riksdag, 2 uppl. Sveriges Riksdag, Riksbankens Jubileumsfond, Stockholm.
Smith, Eivind 1990. "Den høyeste domsmakt i nordisk statsrett i første halvdel av det nittende århundre", i *Rättshistoriska studier, 16, Högsta domsmakten i Sverige under 200 år*. Institutet för rättshistorisk forskning, Stockholm.
Smith, Eivind 1991. "Modeller for normkontroll: domstoler som korrektivmulighet", in *Författningsdomstol och lagprövning i nordisk och europeisk belysning*, Rättsfonden, Stockholm.
Smith, Eivind 1993. *Høyesterett og folkestyret. Prøvingsretten overfor lover*. Universitetsforlaget, Oslo.
Smith, Eivind 1994a. "Norge som konstitusjonelt demokrati", in Bjørn Erik Rasch and Knut Midgaard, eds. *Representativt demokrati. Spilleregler under debatt*. Universitetsforlaget, Oslo. Also in *Jussens Venner*, 1994:5, 297–315. cf. "La démocratie constitutionnelle en Norvège", *Revue Belge de Droit Constitutionnel*, 1996:4, 479–498.
Smith, Eivind 1994b. "Statsrådenes politiske og konstitusjonelle ansvar for statlige virksomheter med styre", *Nordisk Administrativt Tidsskrift*, 75, 91–110.
Smith, Eivind, eds. 1995a. *Constitutional Justice under Old Constitutions*. Kluwer Law International, Haag.
Smith, Eivind 1995b. "The legitimacy of judicial review of legislation: A comparative approach", in Smith 1995a.
Smith, Eivind 1996. "Introduction: 'Sovereignty'—National and Popular", in Eivind

Smith, ed. *National Parliaments as Cornerstones of European Integration*, Kluwer Law International, Haag.
Smith, Eivind 1997. "Loven som det høyeste uttrykk for almenviljen—eller konstitusjonelt demokrati?", in Lars-Göran Malmberg, ed. *Statsbegreppet i omvandling*. Norstedts Juridik, Stockholm.
Smith, Eivind 1998. "Uavhengig sentralbank?", *Aftenposten*, Oslo, 20 Febr. 1998.
Smith, Gordon 1976. "The functional properties of the referendum", *European Journal of Political Research*, 4, 1–23.
SOU 1967:26. *Partiell författningsreform*. Betänkande av Grundlagberedningen.
SOU 1975:75. *Medborgerliga fri- och rättigheter: regeringsformen*. Betänkande av 1973 års fri- och rättighetsutredning.
SOU 1977:94. *Personval och valkretsindelning*. Betänkande av Personvals- och valkretsutredningen.
SOU 1978:34. *Förstärkt skydd för fri- och rättigheter*. Betänkande av Rättighetsskyddsutredningen.
SOU 1987:6. *Folkstyrelsens villkor*. Betänkande av Folkstyrelsekommittén.
SOU 1993:14. *EG och våra grundlagar*. Betänkande av Grundlagsutredningen inför EG.
SOU 1993:16. *Nya villkor för ekonomi och politik*. Ekonomikommissionens förslag.
SOU 1993:21. *Okat personval*. Betänkande av Personvalskommittén.
SOU 1993:40 *Fri- och rättighetsfrågor*. Delbetänkande av Fri- och rättighetskommittén.
SOU 1998: 124. *Demokrati på europeisk nivå*? Demokratiutredningen.
Strom, Kaare 1990. *Minority Government and Majority Rule*. Cambridge University Press, Cambridge.
Strömberg, Håkan 1998. *Allmän förvaltningsrätt*, 19:th ed. Liber Ekonomi, Malmö.
von Sydow, Emily 1998. "EG-dom kan leda till konflikt kring arbetsrätten." *Från Riksdag och Departement*, no 26, 28–29.
Troitzsch, Klaus G. 1979. *Volksbegehren und Volksentscheid*. Hain, Meisenheim am Glan.
Vedel, Georges and Pierre Delvolvé 1990. *Droit administratif*, 1, 11:th ed. Presses Universitaires de France, Paris.
Vedel, Georges 1994. "Schengen et Maastricht", *Revue Francaise de Droit Administratif*, 9, 179–180.
Wade, H.W.R. and Christopher Forsyth 1994. *Administrative Law*, 7:th ed. Clarendon Press, Oxford.
Wagschal, Uwe 1997. "Direct democracy and public policy making", *Journal of Public Policy*, 17, 223–245.
Warnling-Nerep, Wiweka 1991. "Rättsprövning av förvaltningsbeslut", *Förvaltningsrättslig Tidskrift*, 54, 129–166.
Warnling-Nerep, Wiweka 1993. "Rättsprövningslagen: utgör den ett lyckat försök att anpassa svensk rätt till Europakonventionens art. 6(1)?", in *Festskrift till Jacob W. F. Sundberg*, Juristförlaget, Stockholm.
Warnling-Nerep, Wiweka 1995. *Kommuners lag- och domstolstrots*. Juristförlaget, Stockholm.
Wennergren, Bertil 1998. "Den svenska modellen och grundlagen", *Förvaltningsrättslig Tidskrift*, 61, 97–119.
Werder, Hans 1978. *Die Bedeutung der Volksinitiative in der Nachkriegszeit*. Haupt, Bern.
Westerhult, Bo 1969. *Underdåniga påtryckningar*. Gleerup, Lund.
Wieslander, Bengt 1995. *JO-ämbetet i Sverige*. Riksbankens Jubileumsfond, Stockholm.
Wörlund, Ingemar 1995. "The Swedish parliamentary election of September 1994", *Scandinavian Political Studies*, 18, 285–291.
Åsard, Erik and W. Lance Bennett 1997. *Democracy and the Marketplace of Ideas. Communication and Government in Sweden and the United States*. Cambridge University Press, Cambridge.

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The SNS Democratic Audit—Reports in English

Democracy and Leadership. Olof Petersson, Jörgen Hermansson, Michele Micheletti, Anders Westholm. 1996.
Democracy across Borders. Olof Petersson, Jörgen Hermansson, Michele Micheletti, Anders Westholm. 1997.
Democracy the Swedish Way. Olof Petersson, Klaus von Beyme, Lauri Karvonen, Birgitta Nedelmann, Eivind Smith. 1999.

Is Swedish democracy different form the rest of Europe? Are there distinguishing features worth preserving or would Sweden gain by adapting her political system to the conditions obtaining in other European countries?

In *Democracy the Swedish Way*, the SNS Democratic Audit continues its examination of the political system. This report looks at Sweden from a European perspective. Is Sweden in need of constitutional reform? How does constitutional government work in Sweden? Has Sweden got a European public sphere? How successful has the reform which introduced voting for individual candidates really been? These are some of the key issues considered in the report.

The SNS Democratic Audit is made up of four academics who are very familiar with political life in Sweden: the professors Klaus von Beyme (Heidelberg), Lauri Karvonen (Åbo), Birgitta Nedelmann (Mainz) and Eivind Smith (Oslo). The report has been edited by Professor Olof Petersson, Research Director at SNS.

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